



JJS/3/LS

Commissioner's File: CM/020/1986

C A O File: AO 4631/SDA/85

Region: London South

SOCIAL SECURITY ACTS 1975 TO 1986  
CLAIM FOR SEVERE DISABLEMENT ALLOWANCE  
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: ~~XXXXXXXXXXXXXXXXXXXX~~

Appeal Tribunal: ~~XXXXXX~~

Case No: ~~XXXX~~

[ORAL HEARING]

1. My decision is that the claimant is entitled to severe disablement allowance from 11 May 1985 to the date of my decision. The adjudication officer's appeal fails.

2. This is an appeal by the adjudication officer from the unanimous decision of the Sutton social security appeal tribunal given on 24 September 1985 allowing the claimant's appeal from the decision of the adjudication officer dated 8 May 1985 in which he decided that she was not entitled to severe disablement allowance from 11 May 1985 continuing because she was over the age of 16 and under the age of 19 and during that period she was receiving full time education.

3. I held an oral hearing of the appeal at which the adjudication officer was represented by Mr C. R. Chivers of the Chief Adjudication Officer's Office in the Department of Health and Social Security and the claimant was represented by Ms Sally Robertson of the Disability Alliance. Both the claimant and her father attended the hearing and gave evidence.

4. The principle question at issue in this appeal turns on the interpretation to be put on regulation 8 of the Social Security (Severe Disablement Allowance) Regulations 1984 (S.I. 1984 No. 1303), and in particular how the number of hours of education are to be calculated with reference to the time which is to be disregarded. I am informed by Mr Chivers that this is a subject which is causing concern to adjudication officers and upon which they would welcome guidance.

5. Section 36 of the Social Security Act 1975 provides for a new benefit namely severe disablement allowance. Section 36(4) specifies that certain categories of persons are not entitled to a severe disablement allowance, and paragraph (b) of sub section (4) specifically provides that a person shall not be entitled to the benefit if he is receiving full time education. Regulation 8 of the Social Security (Severe Disablement Allowance) Regulations provides for circumstances in which a person is to be treated as receiving full time education. I must set out paragraph (1) of that regulation in full:

"8.-(1) A person shall be treated as receiving full-time education for the purposes of severe disablement allowance for any period during which -

(a) he is not less than 16 or more than 19 years of age; and

- (b) he attends for not less than 21 hours a week a course of education; so, however, that in calculating the number of hours a week during which he attends that course no account shall be taken of any instruction or tuition which is not suitable for persons of the same age and sex who do not suffer from a physical or mental disability."

6. The facts are not in dispute. The claimant was born on 11 May 1969. She has been profoundly deaf since birth. She is an intelligent girl and through her own ability and the help she has received from her parents she was at the material time, and indeed still is, taking the General Certificate of Education Examinations and certain subjects in the Certificate Secondary Education Examinations. The examinations which she sits are the ordinary examinations, and in school she covers the same syllabus as the other pupils, throughout the country, who sit for the examination. Up until 1981 she attended a comprehensive school, at which she spent the whole morning in speech training and went to classes in ordinary subjects in the afternoons. Her progress at that school was not satisfactory and in 1981 she obtained a place at the Mary Hare Grammar School and it would appear that she is much happier there and has made better progress educationally. The school caters for severely deaf pupils as well as for children who are deaf. The claimant attended classes for 25 hours 50 minutes each week. She studied English, English Literature, History, Geography, Chemistry, Physics, Biology, Mathematics and Cookery. In addition to the classes in these subjects she spent 3 hours and 20 minutes during the week in what has been described as extra English classes; the teaching given in the extra English classes relates in the main to comprehension and is designed to ensure that the children, because of their special problem, grasp with the mind what has taken place in not alone the English classes, but all classes. What is taught in the extra English class would not be taught to children, who are not handicapped, and it would not be necessary to teach it to them. The curriculum in the other classes covers the syllabus for the General Certificate of Education Examinations and the Examinations for the Certificate of Secondary Education, the same syllabus as all schools whose pupils are taking these examinations cover however the method of teaching is very different. The length of the lessons is deliberately longer than those in a normal school because of the slow learning process, which is inevitably characteristic of pre linguistically profoundly deaf children; and the headmaster has stated in a letter that the classes move at quite a different and a slower speed from the speed at which a class would certainly move in a normal school. All lessons, and particularly the English lessons, contain very considerable sections which would be quite inappropriate in a normal school and this is a result of the linguistic deficiencies of the profoundly deaf pupils. Some of the content of the lessons are those found in lessons in a normal school, but the headmaster gives his opinion - he has also been headmaster of a comprehensive school - that none of the lessons in his present school would be appropriate for a normal school. The claimant has described what happens in class. There is a radio link between the teacher and the pupils, but unfortunately the claimant, who is profoundly deaf, is unable to make use of this. When the teacher writes on the blackboard she does not speak because the children would be unable to lip read. The children do not take notes in class because they are unable to hear what the teacher explains to them and they have to keep their eyes on her lips. There is a substantial element of speech training and comprehension guidance contained in these lessons, which would not be so in a normal class. If a child does not understand a word spoken by the teacher, she is encouraged to put up her hand and ask for an answer, the instruction is stopped while the answer is given. As the children do not take notes in class they are supplied with written notes at the end of each class and they use these together with their memory to write up their theme books. The claimant explains that language is the difficulty and abstract concepts are difficult to grasp. When she gave evidence the claimant struck me as an intelligent girl but she has some difficulty in the pronunciation of words, and I can well understand the need for speech training and comprehension. She took her examinations in 1986, she was then 17 years of age, she did well in some subjects and not so well in others, and she is due to re take a number of subjects in June 1987, when she will be 18 years of age. The children at the Mary Hare School, in the main, take their O level examinations

when they are a year or so older than children in a normal school; such arises because of their handicap.

7. On 18 February 1985 the claimant completed form SDA1 in order to claim severe disablement allowance from 11 May 1985, namely from her 16th birthday. The adjudication officer decided that she was receiving full time education within the meaning of regulation 8 of the Social Security (Severe Disablement Allowance) Regulations and held that she was not entitled to severe disablement allowance from 11 May 1985 "continuing" because of this. She appealed. Her appeal was allowed by the tribunal who decided that she was entitled to benefit from 11 May 1985, on the basis that the instruction and tuition, which she received, was not suitable for persons of the same age and sex who do not suffer from a physical or mental disability. It is from that decision that the adjudication officer appeals.

8. It is argued by Mr Chivers that while time spent on therapy should be disregarded for the purpose of calculating the hours, the time in studying for the O level examinations should be taken into account. He says that the method of teaching differs from that in a normal school, but the content is the same as would be provided for sighted pupils and he argues that it is upon the content the reduction has to be decided. It is submitted on behalf of the claimant that the proper approach when dealing with regulation 8 is to ask, initially, does the claimant attend a course of education for not less than 21 hours a week. If the answer is "no" then she is not receiving full time education. If the answer is "yes", this raises a second question. Is any, or all, of the instruction or tuition which is given suitable for non disabled people of the same age and sex? If it is found not to be suitable then it should be deducted from the 21 hours in question. It appears to me that the submission is well founded and states what the test is. It is further argued that there will be certain cases where all of the instruction or tuition is found not to be suitable. If so, it should all be disregarded, and the claimant will therefore not be receiving full time education. Again I would agree with what is said in that part of the submission. I am obliged to both Ms Robertson and Mr Chivers for the argument which they have put before me. I hope they will excuse me if I do not deal with every facet of it. The kernel of the question is whether the test is the method of teaching or the content of what is taught, and that falls to be decided on the meaning of regulation 8.

9. In my opinion the words of regulation 8(1)(b) are clear, a person is to be treated as receiving full time education, if he attends a course of education for not less than 21 hours a week; in calculating the number of hours "no account shall be taken of any instruction or tuition which is not suitable for persons of the same age and sex who do not suffer from a physical or mental disability. It seems to me that the words relating to the reduction of the hours are precise and unambiguous and that they are to be expounded in their ordinary sense. The meaning given to the word "instruction" in the shorter Oxford dictionary is as follows

1. The action of instructing or teaching; the imparting of knowledge or skill; education;...
2. The knowledge or teaching imparted"

The dictionary continues but I need go no further. The word "tuition" is given, in the same dictionary, the meaning of

"The action or business of teaching a pupil or pupils, esp. in private; tutorial instruction 1582."

It seems to me that the words are used in regulation 8 in the sense of the action of instructing or teaching rather than the knowledge or teaching imparted; the method rather than the concept. If it had been intended that the word "instruction" should bear the latter meaning then it would have been unnecessary to use the word "tuition". So no account is to

be taken of any teaching which is not suitable for persons who do not suffer from a physical or mental disability; in my judgment the words relate not to the content of what is thought but to the method by which it is thought. I am reinforced in the interpretation which I have put on regulation 8(1)(b) when I look at the subject matter with respect to which the words of the regulation are used. Severe disablement allowance is basically an earning replacement benefit so consequently a retired person or a child in education is excluded, but the regulations make various concessions. Regulations 4, 5 and 6 deal with concessions to persons of pensionable age and those over retiring age in certain circumstances. Persons under the age of 16 years are disentitled by virtue of section 36(4)(a) of the Social Security Act and those in full-time education by section 36(4)(b). It appears to me that the object of regulation 8 is to give a concession to handicapped children, who require additional years of special teaching because of their handicap - blindness, deafness or the like - , in order to put them on a par, education wise, with the normal child who leaves school at 16. It is therefore understandable that those who can follow normal teaching should be excluded and that the concession should relate to special methods of teaching. I am satisfied that the concession is not limited to the teaching of special skills required by handicapped children but extends to methods of teaching, of ordinary subjects, without which the handicapped child could not be prepared for examinations and where such methods would not be suitable for children of the same age and sex who do not suffer from a disability I now apply the reasoning to the instant case. It is conceded that the 3 hours and 20 minutes spent in extra English classes during each week is to be deducted from the total number of hours of education; when that is done the hours spent in class come to 22 hours and 20 minutes. It seems to me that no account is to be taken either of the hours in the ordinary classes because the whole of the teaching there would not be suitable for children of the same age and sex who do not suffer from a physical disability. A normal child, who attended such classes, would be held back in his education, part of the teaching would be of no assistance to him at all. I have borne in mind that the word used in the regulation is "suitable". If I am wrong in holding that the entire instruction given in these classes is to be disregarded, it is beyond doubt that the parts of the instruction which is designed to help the children to comprehend the teaching and that which is in effect speech therapy are to be disregarded, nothing in that teaching would be appropriate to the instruction of the normal child. The evidence of the claimant and her father was that a considerable amount of time was so spent by the teacher and the pupils, and it seems to me on the balance of probabilities that such time would reduce the period spent on the course of education to under 21 hours. I find no fault in the decision of the tribunal on this aspect of the case.

10. A further point was taken on behalf of the adjudication officer which relates to the period covered by the claim. It is argued that the period of claim consists of one day only namely 11 May 1985 and the claim is limited to that day. A surprising point to take in view of the question on the claim form (SDA 1) which is on the case papers (pages 5 to 8) and the answer given thereto. I quote from the form:

"Claim date

What date do you want to claim Severe Disablement Allowance from?"

This should be the first day you think you qualify for SDA

11/5/85

and further in view of the adjudication officer's own decision (page 11 of the case papers) of 8 May 1985, which was as follows

"The claimant is not entitled to severe disablement allowance from 11.5.85 continuing because she was over the age of 16 and under the age of 19 and during that period she was receiving full-time education." (my emphasis)

It is argued that the form was not supported by any evidence of incapacity for work because there was no medical certificate and consequently the claim, save for one day, was defeated

by the provisions of regulation 11 of the Social Security (Claims and Payments) Regulations. However it seems to me that the answer to the adjudication officer's contention is that the claim was an open ended one and that it continued from day to day until its final determination. I see no necessity to dwell on the matter further other than to say I have borne in mind the tribunal's decision in R(S) 1/83 and the decision of the Commissioner in R(I) 5/84.

**(Signed)** J J Skinner  
Commissioner

**Date:** 10 February 1987