Bulletin 169

THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CSDLA/552/01

SOCIAL SECURITY ADMINISTRATION ACT 1992
SOCIAL SECURITY ACT 1998

APPEAL FROM THE APPEAL TRIBUNAL UPON A QUESTION OF LAW

COMMISSIONER: L T PARKER

Oral Hearing

DECISION OF SOCIAL SECURITY COMMISSIONER

1. The decision of the Edinburgh appeal tribunal (the tribunal) held on 31 January 2001 is erroneous in point of law. Accordingly, I set it aside and remit the case for rehearing by a differently constituted tribunal in accordance with directions given below.

The issue

2. The main issue raised by the appeal concerns the correct application of the phrase "so severely disabled physically or mentally that", repetitively used in the statutory criteria for the care component of disability living allowance (DLA).

3. S.72(1) of the Social Security Contributions and Benefits Act 1992 provides as follows:-

> "72.-(1) Subject to the provisions of this Act, a person shall be entitled to the care component of a disability living allowance for any period throughout which-
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> (a) he is so severely disabled physically or mentally that -
>
> (i) he requires in connection with his bodily functions attention from another person for a significant portion of the day (whether during a single period or a number of periods); or
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> (ii) he cannot prepare a cooked main meal for himself if he has the ingredients; or
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> (b) he is so severely disabled physically or mentally that, by day, he requires from another person –
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> (i) frequent attention throughout the day in connection with his bodily functions; or
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> (ii) continual supervision throughout the day in order to avoid substantial danger to himself or others; or
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> (c) he is so severely disabled physically or mentally that, at night, -
>
> (i) he requires from another person prolonged or repeated attention in connection with his bodily functions; or
>
> (ii) in order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him."

Background

4. The claimant's date of birth is 13 July 1995. The date of the DLA claim in issue is 25 May 2000 and the adverse decision under appeal was notified on 29 August 2000. That decision held that the claimant was not entitled to DLA from and including the date of claim. On the claim form, the answer given to the question "What are the child's illnesses or disabilities?" was "bedwetting". Further on in the claim form, it was said that he wet the bed most nights, requiring his mother to change his night clothes and bedding. He would not

wear protective clothing because he saw that as "babyish". At the end of the claim form, the general practitioner (GP) wrote that:-

> "[the claimant] was emotionally and possibly physically abused as a young child by his father and his father's family.
> This had a profound effect on him and continues to have nocturnal enuresis."

5. At the tribunal hearing on 31 January 2001, the claimant's mother was present and the claimant was represented by Mr Andrew Little of the local welfare right's service. He has continued to represent him throughout the proceedings. On the claimant's behalf, Mr Little contended that he was entitled to middle rate care component DLA on the basis of night attention needs. He had witnessed physical violence and there had been verbal violence both to his mother and to himself. There was plastic sheeting but Mr Little reiterated that the boy would not wear anything protective.

6. The claimant's mother told the tribunal that once or twice a night she had to wash her son down in the shower and change his pyjamas and sheets. The GP had given her the sheets. She could not afford to buy nappies. There was no alarm system in use. She had been told that the claimant was too young for this and they would wait until he was seven years old.

Tribunal decision

7. The tribunal unanimously confirmed the decision under appeal to it.

8. After narrating the history of the claim and the finding of fact that the claimant "suffers from nocturnal enuresis", and having accepted the mother's evidence as to what she did for the claimant, the tribunal continued:-

> "In reaching their decision not to allow the appeal, the Tribunal considered the statutory test for an award of middle rate Care in this situation, namely that a person must be so severely disabled physically that they need from another person prolonged or repeated attention at night in connection with bodily functions. The Tribunal was satisfied that [the claimant] required attention at night being severely disabled due to enuresis and that that attention was connected to his bodily functions being the changing of wet bedding and night clothes and the washing down or *[sic]* [the claimant] after the wetting episode. Following the Cockburn decision, the Tribunal considered that the laundering of the wet sheets could also be considered to be connected to his bodily functions and, the period of 20 minutes required to attend to [the claimant] could be considered as a prolonged period.
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> However, the Tribunal decided that the conditions for an award were not met for the following reasons:-
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> It seemed to the Tribunal that it would be quite reasonable to expect [the claimant] to still wear night nappies or some form of incontinence pads to prevent the extent of the problems arising at present, so that if he were to

> wet himself it might well reduce the amount of attention needed in that his bedding might not require changed *[sic]* each time.
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> In addition the Tribunal did not consider that the further condition for an award of Care component for those under 16 years old was satisfied, namely, that his requirements for attention were not substantially in excess of the normal requirements of persons of this age. The Tribunal considered the attention received by [the claimant] was not outside the whole range of help that would normally be required by a child of the same age who is not disabled. The Tribunal considered that the fact that the general practitioner would not provide [the claimant] with any treatment until he was seven was illustrative of this.
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> In the circumstances the appeal is refused."

Appeal to the Commissioner

9. The claimant appeals to the Commissioner, leave having been granted by a full-time chairman. There are two grounds of appeal. Firstly, it is contended that the use of pads or nappies would not necessarily remove all the night attention needs. Furthermore, this issue was not put to the claimant's mother for comment. Secondly, it is argued that normal children of the claimant's age do not bed-wet to the same degree, so that the tribunal's conclusion that the claimant's requirements for attention were not substantially in excess of the normal requirements of persons of his age was not sustainable. The Secretary of State's written submission to the Commissioner supports the appeal but for a very different reason. The claimant's own grounds are not accepted but the Secretary of State submits that the tribunal has failed to answer the necessary question whether the claimant suffers from a disability; to state that the claimant has enuresis does not necessarily mean that he has a disabling condition.

Oral hearing

10. The case came before me for an oral hearing on 6 December 2001. As noted above, the claimant was represented by Mr Little. The Secretary of State was represented by Mr Jonathan Brodie, Advocate, instructed by Miss Ritchie, Solicitor, of the Office of the Solicitor to the Advocate General. I am grateful to them both for their very helpful submissions.

11. Both parties maintained that the tribunal decision was in error of law and required remission to a new tribunal for a fresh hearing. I agree and therefore concentrate on what were the errors which I accept and what are the directions for the benefit of the new tribunal.

My conclusion and reasons

The main issue: so severely disabled physically or mentally that –

12. The parties agreed that there is no *free-standing* need for a severe disablement. There has to be a physical or mental disablement resulting in care requirements fitting the statutory criteria. But if such needs exist, and are so caused, this is sufficient. From the wording of the phrase, the severity of the disablement is determined by reference to the care needs which

arise and is not to be considered by reference to the general nature of that disablement divorced from its actual consequences with respect to the claimant's need for attendance. There is now no dispute amongst the Commissioners on this point.

13. The parties accept, moreover, that findings must be made about whether or not a physical or mental disability exists. However, in reliance on the decision of Commissioner Levenson in CDLA/15892/96, as further amplified by the Commissioner in a common appendix to CDLA/1659/97 and three other decisions (★17/99), Mr Little argued that a medical acceptance of disablement is not essential and reliance may be based solely on the actual behaviour and functioning of the claimant. Mr Little submitted that the tribunal had considered all the evidence about the claimant's night time needs, concluded therefrom that he had nocturnal enuresis and that this was sufficient.

14. Mr Brodie did not agree. His main submission is that the tribunal erred in law by failing to identify a recognised medical condition that has caused physical or mental disablement. Furthermore, even if a tribunal may consider all the evidence on a non-medical functional basis, there is insufficient evidence on which any tribunal could conclude that this claimant is suffering from a physical or mental disability. In any event, the tribunal erred by failing to provide adequate facts and reasons for their conclusions, whether they used the narrower or wider test for the necessary physical or mental disability.

Consideration of the authorities

15. Regarded as the leading authorities for many years are the decisions in CA/123/91 and R(A)2/92. In both cases, a Commissioner accepted the submission by the Secretary of State's representative that:-

> "The phrase 'severely disabled physically or mentally' relates to a condition of body or mind that can be defined medically."

16. At paragraph 10 of the latter decision, Commissioner Skinner added:-

> "Clearly where a person indulges in aggressive or seriously irresponsible conduct the Board has to consider whether that arises from some disordered mental condition or whether it merely arises from a defective character."

17. However, in CDLA/15892/96, Commissioner Levenson said:-

> "It seems to me that to suffer from enuresis is to suffer from a disability. Whether it is physical or mental in origin, or whether its origin can or cannot be established is irrelevant."

18. In ★17/99, the common appendix, Commissioner Levenson referred to the change from adjudication by a medical appeal tribunal to that by a disability appeal tribunal. (Now the same questions go to the appeal tribunal which is constituted in exactly the same way as a disability appeal tribunal). On this basis, the Commissioner suggests that the earlier decisions are no longer authoritative in requiring a medical acceptance of disablement. But there has been no material change in the statutory language nor in the nature of the questions to be decided. Commissioner Levenson's approach has therefore been disapproved in

CDLA/835/97 (Commissioner Howell), by Commissioner May in CSDLA/531/00, by Commissioner Jacobs in CDLA/787/98 and by Deputy Commissioner Newsome in CDLA/3344/99. Moreover, although Deputy Commissioner Mark in CDLA/948/00 (★73/01) purports to prefer the views of Commissioner Levenson, in fact the Deputy Commissioner (see paragraph 28) seems to accept that, at minimum, the condition in question must be medically recognised as a disability.

19. The preferred approach, which I direct the new tribunal to follow, is therefore that it must be satisfied that the claimant has some condition capable of being medically accepted as causing a physical or mental disablement and which gives rise to the appropriate care needs. There is a good reason why this is the preferred approach. It is a useful evidential means to distinguish those who have a genuine physical or mental injury, disorder or disease, from those who do not. For example, two claimants may have exactly the same symptoms and need for attention yet in one case due to problems which can be controlled at will. Inevitably, there may be some who are genuinely ill but whose conditions have not yet been medically recognised. However, this is unavoidable in any evidence based system where the claimant bears the onus of proof on a balance of probabilities.

20. To that extent, I agree with Mr Brodie that there is a three stage process. There must be an injury, disorder or disease which produces physical or mental disablement, which then leads to the appropriate care needs. This was an approach adopted by Mr Commissioner Jacobs (when he was a Deputy Commissioner) in CDLA/16484/96 with respect to physical disablement and mobility component. It was followed by the Chief Commissioner in Northern Ireland, Commissioner Martin, in C8/00-01(DLA). I endorse that approach as a helpful analysis (although I am not sure I accept Chief Commissioner Martin's conclusion that there was *physical* disablement on the facts before him, but that is a different issue).

21. Where I part company from Mr Brodie is in his apparent argument that there must be an accepted medical label for the condition that causes a physical or mental disablement. The majority of the authorities confirm that the claimant must have "a condition of body or mind that can be defined medically" as the source of disablement in order to satisfy the statutory requirement. But it has not been judicially suggested that an agreed diagnosis is mandatory and I consider this would unduly stretch the legislative criteria.

22. On this point, I agree with the views of Deputy Commissioner Mark in CDLA/948/00, when discussing paragraph 10 of R(A)2/92, in which Commissioner Skinner referred to the need to find "some recognised disordered mental condition". (As it is not in issue here I reserve my opinion on Deputy Commissioner Mark's interpretation of *physical* disablement). At paragraphs 13 and 28 of CDLA/948/00, Deputy Commissioner Mark said:-

> "13. This case does not decide that the tribunal or board must be able to identify the precise condition from which the claimant is suffering. It is possible, for example, that there is a difference of medical opinion as to that, although all doctors involved agree that there is mental disability and not simply a defective character or other problem. So too, a claimant may have a physical problem the cause of which is still being investigated. There is nothing in this decision which prevents a tribunal from concluding that there is a physical or mental disability if it concludes that that is the case on a balance of probabilities, but is unable to say on the balance of probabilities what the precise physical or mental cause is.

> Further, provided that the tribunal is satisfied on the balance of probabilities that the claimant is suffering from either a physical or a mental disability rather than some other problem, I can see no reason, except in relation to the higher rate of the mobility component with which I deal separately, why it needs to come to a conclusion as to which of various possible disabilities the claimant is suffering from. ....
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> 28. ... in R(A)2/92 the issue was whether the claimant suffered from a mental disability at all, not whether it was necessary to resolve a dispute as to which of two mental disabilities he suffered from. The use of the word 'recognised' in R(A)2/92 must be read in this context. Mr Commissioner Skinner was not considering a situation in which there was plainly a disability and the only question was which one, and in my judgement can have meant no more than that the condition in question must be medically recognised as a disability."

23. Deputy Commissioner Mark goes on at paragraph 29 to say:-

> "... The statute does not say that the disability must be identified, and I cannot see that a dispute between doctors, or the absence of a precise diagnosis of the disability can possibly have been intended by parliament to take out of benefit the unfortunate sufferer who would qualify whichever of the possible diagnoses eventually proved to be right ..."

Enuresis

24. The tribunal therefore required to satisfy itself on a balance of probabilities from all the evidence that the claimant suffered from a condition which respectable medical opinion would consider gave rise to a physical or mental disability, even if no agreed label has yet been applied to the claimant's case (see paragraphs 34 to 38 of CDLA/787/1998 in which Commissioner Jacobs emphasises that even a diagnosed condition is insufficient where it does not lead to the appropriate functional impairment.) As Commissioner Brown in Northern Ireland opined in C42/99-00(DLA)(★9/01), also considering nocturnal enuresis, in a 10 year old enuresis may or may not result from a physical or mental disablement. Moreover, there is a distinction between a psychological cause and a mental disablement.

25. The Commissioner put it this way:-

> "8. ... It appears to me that while psychological does indeed mean of, or pertaining to the mind, that is very far from meaning the same thing as does mental disablement. To be disabled means to lack power or to be impaired. Quite obviously many conditions pertaining to the mind (e.g. reaction to an abnormal situation) do not necessarily involve any such impairment. The legislation relating to Disability Living Allowance is to the effect that only care and supervision needs coming from a mental or physical disablement can be taken into consideration. It is not therefore accurate to state that the terms 'psychological' and 'mental disablement' are interchangeable or are synonymous.

9. I give examples, some hypothetical, not related to this case, which illustrate the difference. A person may suffer grief reaction leading for a time to a lack of interest in normal activities. The person's condition is psychological but it does not necessarily involve any impairment of mental faculties. It is a reaction to a stressful event. No actual disablement is involved. Similarly, a child if being bullied at school may become anxious and behave in an unusual manner. Again no impairment of faculties is necessarily involved. The child perceives a threat (possibly correctly) and responds to it by becoming anxious. This state is, in the words of the DMA handbook, 'a normal and appropriate response to stress'. It is psychological. However, as that handbook also states it 'becomes a recognisable illness when it is disproportionate to the severity of the stress, continues after the stressor has gone or occurs in the absence of any stressful event.' To know, therefore, that a condition has a 'psychological' origin is not enough to satisfy the statutory conditions. It is care needs from mental disablement which qualify. ...

14. ... a mental disablement may well manifest itself by a behavioural problem. The point is, however, that behaviour problems can show themselves without there being any mental disablement. The need to establish a mental disablement is long term settled law as the decisions in R(A)2/92, CA/123/91 and Re H (a minor) (on appeal from CA/648/91) reveal. Behavioural problems can of course be a manifestation of mental illness. However they can also be a temporary response, short of illness, to an abnormal situation. They can be a manifestation of defective character not of mental illness. They can be a result of taking a stimulant, drugs or alcohol. They may be a result of deliberate choice to gain an end or be a result of poor discipline. Again of course, I am not in any way stating that any of those is the situation in this particular case. The examples do, however, indicate the danger of departing from the statutory language. In ordinary speech problems being behavioural do not necessarily mean that the person who behaves oddly is mentally disabled. Nor does a condition being 'psychological'."

26. Other cases involving enuresis are CDLA/926/94 (Commissioner Mesher), CDLA/787/98 (Commissioner Jacobs), and CSDLA/296/98, CSDLA/1095/99 (★99/00), CSDLA/531/00 (★75/00) and CSDLA/512/98 (now reported as R(DLA)2/00 and set aside by the Court of Session but not on this point), all decisions of Commissioner May. These cases uniformly hold that it is an error of law if a tribunal makes an award simply on the basis of enuresis without further establishing that there is a physical or mental disablement which affects the claimant.

27. Commissioners' decisions do not, of course, provide authority that enuresis is or is not a mental or physical disablement, despite the suggestion by Commissioner Levenson in CDLA/15892/96 that enuresis always is a disability and that of Commissioner May in CSDLA/1095/99 to the opposite effect. Rather, whether the claimant has enuresis and from a

cause which is capable of being medically accepted as amounting to physical or mental disablement, is a matter for the relevant adjudicating authority to decide in the claimant's case from the evidence before it, using their own knowledge and experience in such assessment.

28. In CDLA/787/98, the Commissioner had the benefit of a medical assessor who advised that there was no evidence the claimant's incontinence had a physical cause. The claimant had a conduct disorder because he had failed to learn appropriate behaviour, but it was not a mental disablement because it did not prevent the claimant from doing anything. He could use the toilet normally when he wished. A diagnosis of enuresis was not sufficient in itself because such a diagnosis did not necessarily involve functional impairment. Therefore the Commissioner held that, on those particular facts, there was no medically recognised physical or mental disability.

29. Commissioner Jacobs further held that there was no causal link between the disability and the need for attendance. He said:-

> "49. ... On the basis of my medical assessor's advice, the nature of the claimant's conduct disorder is that assistance reinforces the inappropriate behaviour. So, there is no causal link from the claimant's conduct disorder to the reasonable need for any form of attendance that is covered by Disability Living Allowance."

30. I accept the Secretary of State's submission that in this case there was insufficient evidence from which the tribunal could conclude that the claimant had enuresis due to a cause which was capable of being medically accepted as, firstly, producing a disability and, secondly, one which was physical or mental. The note from the GP at page 38 of the papers (see paragraph 4 above) gives insufficient information for any relevant conclusions. It follows that the tribunal has further erred by inadequate facts and reasons on essential points ie whether the claimant had a condition, capable in his case of being medically accepted as causing a physical or mental disablement, which gave rise to the necessary attendance needs.

Use of nappies or pads

31. I do not accept Mr Little's argument that, because using nappies is a hypothetical situation for the claimant, the tribunal was prohibited from taking it into account. The relevant question is what attention a claimant "reasonably requires". This involves considering whether a claimant can reasonably be expected to minimise their problems. However, error of law lay in the tribunal's failure to put the steps it contemplated for removing or reducing the attention needs to the claimant or the claimant's representative, for comment as to the practicality, reasonableness or effectiveness of the measure, before the tribunal made its own conclusions.

32. Whether or not the claimant's mother can afford incontinence aids is a relevant factor in determining whether it is reasonable to expect her to buy them. However, if the mother's original assertion on the claim form is correct, as reiterated by her representative at the hearing, that the claimant would not wear nappies or pads, the issue of whether the mother can afford them is academic. The issue then becomes the relevance of a five year old refusing to wear nappies because he considers this is "babyish".

33. I accept the Secretary of State's argument that whether the claimant's behaviour is reasonable for a five year old is not to the point. In such a case, provided the use of pads or nappies precludes attention needs sufficient to qualify, then the claim fails. Qualifying attention must be in consequence of the disablement and not of religious or cultural or other beliefs of the claimant.

34. In CA/137/84 a child had a short right arm with severe weakness of grip in the hand. It was suggested that he reasonably required attention in connection with the bodily function of eating because he could not use his right hand for that purpose. According to Muslim custom, the left hand cannot be used for eating because of its use in washing the body after urination and defecation. The claim failed. The Chief Commissioner held that the requirement for attention must be in consequence of the severe disablement and not from its combination with the religious or cultural beliefs of the claimant. Therefore, if the claimant does not wear nappies because he believes this is "babyish" but their use would negate qualifying attention, he cannot show the necessary causal link between the disablement and resultant care needs.

The additional child condition

35. With respect to a child under the age of 16, s.72(6) of the Social Security Contributions and Benefits Act 1992 applies. This reads as follows:-

> "(6) For the purposes of this section in its application to a person for any period which he is under the age of 16 –
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> (a) sub-paragraph (ii) of subsection (1)(a) above shall be omitted; and
>
> (b) neither the condition mentioned in sub-paragraph (i) of that paragraph nor any of the conditions mentioned in subsection (1)(b) and (c) above shall be taken to be satisfied unless –
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> (i) he has requirements of a description mentioned in subsection (1)(a), (b) or (c) above substantially in excess of the normal requirements of persons of his age; or
>
> (ii) he has substantial requirements of any such description which younger persons in normal physical and mental health may also have but which persons of his age and in normal physical and mental health would not have."

36. The tribunal adopted and applied the approach suggested to them in the written submission made to it by the Secretary of State. This was (see page H of the papers) that:-

> "Substantially in excess means that the attention, supervision or watching over is outside the whole range of help that would normally be required by a child of the same age who is not disabled."

But this summary is defective because it does not stress that the yardstick against which those of the claimant's needs which result from disablement are to be measured is the care required by an *average* child of the same age who is not disabled.

37. The leading case is CA/092/92 which is usually provided in the submission for a tribunal's benefit but was not so included in this case. The relevant paragraph is paragraph 9 which reads as follows:-

> 9. The other general question raised by this appeal is how one judges what attention or supervision is normally required by a child of the same age ... Children vary considerably in their requirements for attention and supervision, particularly when they are young. At any age, there is a range of requirements for attention or supervision .... the legislation contemplates a yardstick of an average child, neither particularly bright or well-behaved nor particularly dull or badly behaved, and then the attention or supervision required by the child whose case is being considered must be judged to decide whether it is 'substantially' more than would normally be required by the average child. That, I think, comes to much the same thing as saying that the attention or supervision required must be substantially more than that normally required by *most* children ...Attention or supervision is not to be regarded as 'substantially' in excess of that normally required unless it is outside the whole range of attention or supervision that would normally be required by the average child. However, it need not necessarily be substantially in excess of that which would be required by a particularly dull or badly behaved, but not physically or mentally disabled, child ...."

38. A tribunal analyses the evidence and evaluates the merits. Provided it bases its findings on evidence and adequately explains itself, its conclusions on whether the claimant's needs are substantially in excess of the normal requirements of an average child of the same age who is not disabled cannot be questioned, if they are such inferences as a reasonable tribunal could draw. The tribunal's error in this case, however, is their use of an incorrect test.

Directions

39. My directions to the new tribunal are these:-

> (a) Given the date of appeal to the tribunal in this case, matters are to be taken by the new tribunal only down the date of 29 August 2000, the date of the decision under appeal. Later evidence may, however, cast light on the circumstances during the period in issue. *It would be particularly helpful if the District Chairman directed that a medical report be obtained from the General Practitioner on whether it is medically accepted that there is or has been a condition causing physical or mental disablement in the claimant's case which gave rise to the enuresis.*

(b) Findings and reasons will be required on the following points:-

- Whether, during the relevant period, the claimant suffered from a condition which, on the balance of probabilities, is medically accepted as producing a physical or mental disablement giving rise to care needs. It is not essential there be medical unanimity on the exact diagnosis. Provided it is medically acknowledged that there is either a physical or a mental disability in the claimant's case, there need be no agreement on whether the precise cause is physical or mental. It does not matter if a medical label has yet to be attached to the claimant's condition. So long as the tribunal is satisfied from the evidence that the claimant has a condition capable of being medically accepted as a physical or mental disablement, this is sufficient.

- If yes, does the pattern of reasonable requirements for attention in connection with the bodily function of urinating fit the statutory criteria at night?

- Changing the child's clothes, bed linen and washing him, if it is unreasonable to expect the child to do so himself because of age, is capable of constituting attention in connection with the bodily function of urinating, as decided by the majority opinion in the *Cockburn* case, R(A)2/98, a decision of the House of Lords. This even extends to rinsing out the linen and hanging it up to dry, provided done immediately as part of the same operation and not later.

- Would incontinence aids such as pads or nappies reduce or eliminate any qualifying needs? The claimant's mother must be given the opportunity to comment on the reasonableness, practicality and efficacy of such measures. If the claimant refused to wear protective clothing, any resultant attention needs such clothing would prevent could not then be materially due to the disablement.

- If the claimant otherwise satisfies the statutory criteria, are his needs which arise from physical or mental disablement "substantially in excess of the normal requirements of persons of his age"? The new tribunal is reminded that such attention may be constituted by virtue of the time over which it is required or by virtue of the quality or degree of attention which is required. Attention is to be regarded as substantially in excess of that normally required, where it is outside the whole range of attention that would normally be required by the average child.

Summary

40. The decision under appeal is therefore returned to a new tribunal for a fresh decision on the merits. It is emphasised that there will be a complete rehearing on the basis of the evidence and arguments available to the new tribunal. My jurisdiction is limited to issues of law so my decision is no indication of the likely outcome of the rehearing.

(signed)
L T PARKER
Commissioner
Date: 15 January 2002