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JBM/SH/11/MD

Commissioner's File: CA/080/1986

DHSS File: SD 450/2164

SOCIAL SECURITY ACTS 1975 TO 1986
APPEAL FROM DECISION ON REVIEW OF ATTENDANCE ALLOWANCE BOARD
ON A QUESTION OF LAW

Name:

1. My decision is that the decision of the Delegated Medical Practitioner (hereinafter called DMP) dated 13 May 1986 made on behalf of the Attendance Allowance Board is not erroneous in point of law.
2. This is an appeal by the claimant with the leave of the Commissioner to the Commissioner against the decision of the DMP dated 13 May 1986.
3. The facts and history of the case are dealt with in paragraphs 1 to 3 inclusive of the submission dated 1 October 1986 made on behalf of the Secretary of State on which the claimant and the claimant's representatives have had the opportunity to comment. No useful purpose would be served by my setting out these matters afresh here.
4. The relevant statutory provisions are referred to as an annexure to the decision of the DMP dated 13 May 1986. Nothing is to be gained by my setting out those references afresh here.
5. In my judgment and for the reasons given below the decision of the DMP is not erroneous in point of law. Whether the medical conditions governing entitlement to attendance allowance are satisfied is a matter solely for determination by the Attendance Allowance Board or its delegated medical practitioner. The DMP is required to decide whether or not the claimant requires attention or supervision from another person sufficient to satisfy the provisions of section 35(1) of the Social Security Act 1975. In considering a claim the nature, extent, or severity of a disablement or illness, while relevant, is not the determining factor. The DMP in his detailed decision dated 13 May 1986 sets out his reasons for so concluding and the DMP considered the day attention condition in paragraph 2 of his decision. The DMP had to address himself to the question as to whether the attention Miss required in connection with her bodily functions was sufficient to be described as frequent attention throughout the day. He had to be satisfied not merely that the attention was needed regularly or frequently but frequently "throughout" the day. There is no definition of "throughout" in the Act but the Oxford Dictionary gives its meaning as "right through, in every part in all aspects". It will of course not be necessary and there is no such suggestion for a claimant to require attention every minute of the day in order to satisfy the statutory conditions. However "throughout" in the context of the 1975 Act connotes attention which is given very often during the period accepted as the day. From

the medical report completed on 5 October 1985 the DMP noted that Miss [redacted] was blind but could walk around in her normal surroundings of her home in safety. Mr [redacted] signed statement also confirms this in the medical report where he stated she could "walk inside the house unaided". Miss [redacted] could perform all the bodily functions listed in the medical report except she required to have food cut up due to her blindness. Further the DMP noted Miss [redacted] suffered from diabetes which was controlled by medication and special diet and he accepted her food required special selection and this action effectively fell to the claimant's overall treatment of her condition and was in connection with her bodily functions. The DMP did not however accept that the special selection of food was sufficiently complex and time consuming to constitute frequent attention throughout the day. This was in my judgment a medical decision to which he was entitled to come. Further the evidence showed Miss [redacted] was unable to perform domestic duties and her brother had to do the shopping, heavy housework, the laundry, and the cooking. In the grounds of appeal it is claimed as the DMP accepted that the selection of food was attention in connection with her bodily functions that the DMP ought to have taken into consideration the preparation of food and the supervision given to ensure the food is eaten to be in connection with her bodily functions. Mr [redacted] accepts that cooking is not ordinarily "attendance in connection with a bodily function" but his contention is that his sister's case can be distinguished from the House of Lords decision of 1984 in Woodling as in the instant case the DMP's finding as fact was that the food intake is part of a medical regime controlling his sister's diabetes. The DMP however accepted Miss [redacted] food needed special selection but this action did not constitute frequent attention throughout the day and housework, shopping, laundry and cooking cannot be regarded as attendance in connection with the bodily functions. Both the Court of Appeal in April 1981 and the House of Lords in February 1984 confirmed this view and I need only refer to the Appendices to Commissioner's decision R(A)2/80 and to the judgment of Lord Denning in the Court of Appeal in that regard. Decision R(A)1/72 is authority for the proposition that it is not incumbent upon the DMP to deal with every piece of evidence or to overelaborate, but that, in an administrative quasi-judicial decision, the minimum requirement must at least be that the claimant looking at the decision, should be able to discern on the face of it the reasons why the evidence has failed to satisfy the authority. The DMP in his decision accepted Miss [redacted] needed help to cut up food. However the DMP found she could manage the majority of the bodily functions listed in the medical reports without assistance and the help she required did not amount to frequent attention. In the grounds for appeal at point 8 thereof the contention is that the DMP did not appear, at any stage, to weigh the attention required to cut up food in the selection of the special diet together. In my judgment a rigid arithmetical approach to the question whether the attendance allowance conditions are satisfied is erroneous in law if used as a basis for arriving at a decision and in this regard I need only refer to decision R(A)2/74. In my judgment the decision of the DMP was a reasonable one as the activities of cutting up food and selection of food are only normally required at certain times of the day and as there are lengthy intervals between the times at which help is required the attention cannot be said to be required frequently throughout the day. In my judgment the decision of the DMP is not perverse nor is it erroneous in law in his finding attention given in connection with the above referred to activities did not constitute frequent attention throughout the day. Further in my judgment the decision of the DMP was consistent with the evidence before him. The DMP in my view gave adequate reasons for arriving at his decision. In my view the decision of the DMP was not erroneous in point of law.

6. Accordingly my decision is as set out in paragraph 1 of this decision.

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7. Accordingly the claimant's appeal is dismissed.

(Signed) J.B. Morcom
Commissioner

Date: 1st April 1987