

JM/1/LM

Commissioner's File: CA/092/93

DSS File: SD450/

SOCIAL SECURITY ACTS 1975 TO 1990
SOCIAL SECURITY ADMINISTRATION ACT 1992

APPEAL FROM DECISION OF DISABILITY APPEAL TRIBUNAL ON A QUESTION
OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Elsie Aldridge (Mrs)

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1. This is a claimant's appeal, brought by leave of the chairman of the disability appeal tribunal ("DAT"), ~~CA 93~~ a decision of that tribunal dated 20 January 1993 which confirmed the adjudication officer's review decision notified to the claimant on 14 September 1992. My own decision is that the aforesaid decision of the DAT is not erroneous in point of law.

2. The claimant was born in 1918. She is registered blind. (With the aid of glasses, she has some sight in her right eye.) She suffers from osteoarthritis, chronic rhinitis, urethral syndrome and chest pain. On 25 February 1992 she claimed attendance allowance. Upon the claim form she stated that she could not go out alone, mend, sew, cook, do the shopping or the cleaning of the house.

3. On 12 March 1992 the claimant was seen in her own home by an examining medical officer. She is recorded as having said this to that medical officer:

"My main needs are help with housework and shopping and with my hair and nails."

The medical officer noted that the claimant could stand from her chair and walk around her bungalow at a normal speed and without any apparent impairment of mobility. She was steady on her feet and showed no tendency to walk into furniture or walls. The medical officer concluded: "She is safely mobile in her home." He also noted:

"She repeated constantly her need was for domestic help"

In section 5(a) of the form which the examining medical officer completed is a list of 14 activities the capacity to perform which is relevant to entitlement to attendance allowance. The examining medical officer was of the view that the claimant could perform all of those activities without help from anyone else. He noted that the claimant was not incontinent and that she could use the toilet without assistance. He expressed the view that no attention was needed during the night.

4. On 7 May 1992 the adjudication officer refused to award attendance allowance. For my part, I cannot see how - on the evidence which was before him - he could reasonably have come to any other conclusion. On 19 May 1992 the claimant sought further consideration of her claim. The customary enquiries were then made of her general practitioner. His answers (dated 28 July 1992) did nothing whatsoever to further the claimant's claim. A rehabilitation officer in the service of Nottinghamshire County Council wrote a letter dated 9 June 1992. I quote the only paragraph of that letter which in any way furthered the claimant's case:

"5. Help is required with shampooing hair; nails - feet/fingers; help with cooking meal; feels safer if someone is around when bathing; on occasions has had someone to stay overnight, to lessen anxiety."

5. The adjudication officer reviewed the decision whereby the claim had been refused; but he did not revise that decision. Once again I am bound to say that I should have found any other conclusion to be surprising. In his written submission to the DAT the adjudication officer quotes quite extensively from the judgment of Lord Denning MR in the Court of Appeal in the case of The Queen v The National Insurance Commissioner (Ex parte the Secretary of State for Social Services). I need not here repeat what is quoted by the local adjudication officer. Suffice it to say that the passages quoted make plain that -

- (a) "bodily functions" include breathing, hearing, seeing, eating, drinking, walking, sitting, sleeping, getting in or out of bed, dressing, undressing, eliminating waste products and the like; and
- (b) ordinary domestic duties such as shopping, cooking meals, making tea or coffee, laying the table or the tray, carrying it into the room, making the bed or filling the hot water bottle, do not qualify as "attention in connection with the bodily functions" of the disabled person.

It was the view of the adjudication officer that this claimant did not require any help with her bodily functions and that such help as she did need (with cooking, shopping, laundry, cleaning and other household jobs) did not qualify as attendance within the meaning of the relevant legislation. I am bound to say that I find those conclusions to be unassailable.

6. But the claimant carried her case to the DAT. She did not attend before the DAT; nor was she represented thereat. There was no further evidence. The outcome was a foregone conclusion. The adjudication officer's decision was confirmed. It is my view that any other conclusion would have been perverse. Nothing which the claimant has written since the DAT hearing goes anywhere near to establishing error of law on the part of the DAT. It is possible to feel considerable sympathy for the claimant. But the plain fact is that her condition at the

relevant time simply did not meet the statutory criteria prescribed in respect of entitlement to attendance allowance. If her condition has materially deteriorated since then, she should consider making a fresh claim.

7. The claimant's appeal is disallowed.

(Signed) J Mitchell
Commissioner

Date: 20 October 1994