

Attendance Allowance — need for continual
supervision.

JJS/10/LS

Commissioner's File: CA/97/1987

DHSS File: SD 450/2381

SOCIAL SECURITY ACTS 1975 TO 1986

APPEAL FROM DECISION ON REVIEW OF ATTENDANCE ALLOWANCE BOARD

ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

1. My decision is that the decision given on 3 March 1987 by a medical practitioner for and on behalf of the attendance allowance board (hereinafter referred to as the delegated medical practitioner) is erroneous in point of law. Accordingly I set it aside and remit the matter to the attendance allowance board for rehearing by them or by a differently constituted delegated medical practitioner appointed by them.

2. The claimant was a chief officer in the merchant navy up until January 1986 when he fell ill. He suffers from multiple myelomatosis. The disease from which he suffers is marked by bone changes with thinning of the bones which gives rise to fractures. The claimant must avoid stress and strain in order to prevent a pathological fracture and there is a risk of spontaneous fractures with or without mishaps or accidents and there is a potential danger of this at all times.

3. The delegated medical practitioner when dealing with the day supervision referred to the earlier medical report that the claimant's condition can give rise to danger to himself or someone else and that he must avoid stress and strains to prevent a pathological fracture. He further referred to a later medical report which showed that there was a risk of further spontaneous fractures with or without mishap or accident. The claimant had earlier sustained such a fracture. Reference was also made to the fact that the claimant suffered from multiple myeloma and his bones become increasingly brittle and liable to fracture with minimal pressure. The delegated medical practitioner also paid attention to a signed statement made by the claimant and said that this showed that the claimant's wife can go out to nearby shops leaving him sitting down, otherwise he is never left on his own. The delegated medical practitioner accepted that the claimant was at some risk of a further pathological fracture and that he would therefore require supervision in situations in which there is a risk of falling. He further accepted that supervision is required when he is in predictably, potentially dangerous situations such as bathing, using the shower or negotiating stairs. He also accepted that he should be accompanied when out of doors. The delegated medical practitioner then goes on as follows:

"However, he is stated to be mentally alert and clear and I would expect him to avoid placing himself at risk without ensuring that he was adequately supervised. Any supervision thus given would not, in my view, amount to continual supervision throughout the day. There is nothing in the evidence before me to suggest that he has any disturbances of behaviour or that he or anyone else would be in substantial danger as a result of his disablement if he were not under continual supervision throughout the day."

He then found that the claimant did not satisfy the condition provided for by section 35(1) of the Social Security Act 1975 relating to continual supervision throughout the day in order to avoid substantial danger to himself or others.

4. Moran v the Secretary of State for Social Services (to be published as an appendix to R(A) 1/88) held, that where it is accepted a person requires supervision during an attack, precautionary and anticipatory supervision between attacks, in case intervention during an attack is required, may, depending upon the facts of the individual case, amount to continual supervision for the purpose of section 35 of the Social Security Act 1975. The relevant frequency or infrequency of the attack is immaterial so long as the risk of substantial danger is not so remote a possibility that it might reasonably be disregarded. Moran's case dealt with a person who suffered from epilepsy, but general principles were stated by the court which are not necessarily confined to claimants suffering from epilepsy. As was explained by the Commissioner in CA/066/1986 in order to come within the ambit of Moran, the risk of danger to a severely disabled claimant must arise involuntarily and unpredictably from his medical condition - in other words the danger must be beyond his control. In the instant case it is submitted by the Secretary of State's representative that the delegated medical practitioner's decision was founded on the conclusion that the claimant's condition did not give risk to substantial danger because the claimant could avoid situations where he would be at risk unless he was sure that he had necessary supervision and that therefore continual supervision was not necessary. He argues that it is not a case where the occasions he will be at risk of substantial danger are unpredictable and where there is a need for someone to be present and watching over him continually.

5. As I have said the issue turns on the question of supervision. I have read with care the words of the delegated medical practitioner dealing with this aspect of the case. It seems to me that the delegated medical practitioner dealt only with a limited requirement of supervision (the avoidance of a fracture arising through accident), and in effect ignored the question of such supervision as would be required to avoid a spontaneous fracture or to give immediate assistance to the claimant after he sustained such an injury. The delegated medical practitioner limited his findings to a situation where the claimant was in a predictable potential danger such as when he was bathing, using the shower or negotiating the stairs. But the evidence went further than that and the finding ignores the passive situation, or near passive situation, where a spontaneous fracture could arise and, also, the need for supervision in order that the claimant may be assisted if he suffers such an injury. I do not intend to say more because I might well find myself trespassing on the function of the attendance allowance board. The question of whether the claimant requires continual supervision throughout the day in order to avoid substantial danger to himself is a question for the attendance allowance board or its delegated medical practitioner; but it is in the circumstances of this case a question which has to be looked at in the light of supervision required by a person who by a simple movement could cause a spontaneous fracture to himself.

6. Since I prepared this decision the Secretary of State's representative has submitted further observations in reply to those submitted by the claimant. The filing of such observations does not fall within the general procedure provided for by the Social Security Commissioners Procedure Regulations. I had not exercised the powers conferred by regulation 12. I have read these additional observations but I see no reason to include them in the papers, it does not seem to me that they add to the argument on the issue upon which I have decided the appeal.

(Signed) J J Skinner
Commissioner

Date: 21 April 1988