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THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CDLA/14662/1996

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

MR COMMISSIONER SANDERS

Claimant : Mary Jones-Laut
Tribunal : Oxford
Tribunal Case No : D/21/041/95/0075

1. This is an appeal by the adjudication officer against the decision of the Oxford disability appeal tribunal given on 21 February 1996. The tribunal decided that the claimant was entitled to the care component of disability living allowance at the middle rate from 28 February 1995 for life. They further decided that there was no entitlement to the mobility component.

2. The findings of fact made by the tribunal were -

"Mrs Jones-Laut has been profoundly deaf since birth, she was dumb until 7. She attended residential school for the deaf in Brighton and learnt to speak, lip read, read and write. She does not find lip reading easy; a lot depends on lighting position and manner of speaking. She can speak and be fairly well understood. She mainly communicates by BSE signing. She does not go out save to shop and attend the MIND day centre where she sometimes goes as a volunteer. She has no family and has lived alone since 1987; she is 54. Her husband had his hearing and they used to visit London, go out for meals, attend church, visit friends. She would like to go out but finds communication too difficult without assistance. When a problem arises she cannot phone to make enquiries or ask tradesmen to come to her home in an emergency; going into a shop creates communication difficulties; she does go on unfamiliar routes on occasions, at Christmas she went to visit a friend in Birmingham by coach; but on her return journey the coach was full although she had booked a seat; sorting the problem out took a long time and was embarrassing for her because she was unable to understand what was said to her; when she went to her friend, Mr Henderson's home on foot for the first time because she needed to contact him she took 2 hours to complete a 10 minute walk because she did not know the way and could not understand directions given to her by passers by.

Travelling on public transport requires communication in the matter of fares, times and destinations. Shopping requires communication; other people are not necessarily prepared to listen carefully to the laboured speaking of a deaf person.

If her door light shows there is someone at the door she checks to see if she knows that person before opening the door because of her difficulty in communications with a stranger. She moved like to socialise, but cannot communicate with strangers she would meet in a cafe', public house, church etc.

It is reasonable for her to require attention, in connection with her inability to hear, in the matter of communication.

Mrs Jones-Laut is able to take unfamiliar routes without supervision but not without attention in connection with hearing."

The reasons the tribunal gave for their decision were -

"It is reasonable for the appellant to require to go out of her house for purposes of entitlement and socialising or for doing voluntary work or perhaps learning? of some kind; it is not reasonable to expect her to stay at home on her own all day and all evening. It is reasonable for her to go out for the day, to go on holiday, to go to church or visit shops which she does not know. She cannot do these things because she cannot hear and so cannot communicate save through signing, or in miming. She has to contact her doctor or a plumber on occasions as a matter of urgency and she cannot do that easily; she could not have attended this tribunal without assistance. She needs frequent attention throughout the day in connection with the bodily functions of hearing for purposes of basic living and for purposes of social and recreational kind. The attention she requires whilst taking unfamiliar journeys is taken into account in the care component.

Secretary of State for SS V Fairey (Halliday) C.A."

The original ground for this appeal was that "The tribunal erred in law in deciding that assistance to enable the claimant to engage in social and recreational activities is attention in connection with a bodily function that is reasonably required". Since the outcome of the Fairey case in the House of Lords that ground has been withdrawn. Now the adjudication officer submits -

"4. In this particular case the tribunal found that the claimant was profoundly deaf, that she did not find lip reading easy, that she could speak and be fairly well understood, that she communicates mainly by British Sign Language. The tribunal have related problems that the claimant would have in an emergency and when travelling on public transport. The tribunal concluded their findings by stating "It is reasonable for her to require attention in connection with her inability to hear, in the matter of communication."

5. It is accepted that the assistance the claimant requires with social and leisure activities is attention in connection with the claimant's bodily functions that is reasonably required.

6. In this particular case I would submit that the tribunal have made no specific findings of fact as to the

occasions during the day when the claimant requires assistance with hearing conversation from a third party. It is impossible to discern therefore how they have come to their decision that attention in connection with the bodily function of hearing is required frequently throughout the day. I submit that the tribunal is in breach of Regulation 29(5)(b) of the Adjudication Regulations, for failing to record findings on all questions of fact material to the decision and not having given adequate reasons for the decision."

In response, the claimant's representative says -

"2. The commissioner may wish to note that the Secretary of State has not suspended the award made by the tribunal in this case and that the award continues in payment

3. I submit that the tribunal have recorded substantial findings of material facts and have given adequate reasons for the decision.

4. I submit that the Adjudication Officers inference (129 - para 4) that the tribunal only related the problems that the claimant would have in an emergency and when travelling on public transport can not be sustained.

5. In the decision (121-123) the chairman has recorded details of Mrs Jones Laut's disability including her ability to lip read, read and write English and speak. Specific examples of everyday situations in which Mrs Jones-Laut has, or would, need help with communication are recorded including employment, shopping, using public transport, using a telephone, contacting tradesman or GP, callers to her house, in social situations including church, pub café and voluntary work. I would not describe these as emergency situations.

6. I submit that the tribunal was not required to record a minute by minute account of every situation in which Mrs Jones-Laut received, or may have required, assistance with the bodily functions of hearing and speech through the day. The tribunal correctly considered not only the assistance she actually received, but also the additional assistance she reasonably required in order to enable her to attain a reasonable level of social and leisure activity (including employment).

7. The tribunal properly applied its knowledge and experience of disability to the evidence before them to determine that Mrs Jones-Laut reasonably required attention throughout the day with communication."

I agree with the claimant's representative's submissions.

3. Tribunals must identify with reasonable precision the attention required and the frequency with which it is required. They must of course also identify the bodily function in connection with which the attention is required. This is perhaps a somewhat marginal case but, on balance, it seems to me the tribunal have done enough for me to sustain their decision. I note too that benefit has not been suspended and it may be that it is thought by those concerned that this is not a strong appeal.

4. The claimant does not question the tribunal's decision relating to the mobility component. The tribunal's findings of fact and reasons relating to the care component are in my view sufficient and I disallow this appeal.

(Signed) R A Sanders
Commissioner

(Date) 9 June 1999