DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is given under section 14(8)(a)(ii) of the Social Security Act 1998. It is:

I SET ASIDE the decision of the Bexleyheath appeal tribunal, held on 14 July 2005 under reference U/45/168/2005/01141, because it is erroneous in point of law.

I make findings of fact and give the decision appropriate in the light of them.

I FIND as fact the matters set out in paragraphs 3 and 46 to 49 below.

My DECISION is that there are grounds to supersede the last operative decision awarding a disability living allowance to the claimant. The claimant is entitled to a disability living allowance consisting of the mobility component at the lower rate and the care component at the middle rate on and from 12 July 2004, the date on which (according to the submission to the appeal tribunal) she applied for a supersession.

Any sum already paid in respect of the period covered by this award must be offset against arrears of entitlement under it and, to the extent that the sum does not exceed the arrears, treated as made on account of them: see Case 1 under regulation 5 of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988.

The issue

2. The claimant has a disability living allowance consisting of the mobility component at the lower rate and the care component at the lowest rate. That award has never been in doubt. The issue is whether she is entitled to the care component at the middle rate on the basis of attention. The legal conditions of entitlement that she must satisfy are set by section 72(1)(b) of the Social Security Contributions and Benefits Act 1992:

> '(b) he is so severely disabled physically or mentally that, by day, he requires from another person-
>
> (i) frequent attention throughout the day in connection with his bodily functions.'

The evidence

3. The claimant has had no vision since birth. Despite her disability, she leads an active life, as shown by the diary of her life for the period 9 to 30 June 2005. I find that that diary is an accurate record both of the activities she undertook and the assistance she was given in that period. I shall refer to parts of it, but I am not going to set it out in detail or even attempt to summarise it. I shall concentrate on the legal principles that have to be applied to that evidence.

The appeal

4. This appeal was referred to me for directions following the grant of leave to appeal to a Commissioner by a district chairman. The Secretary of State's representative from the Adjudication and Constitutional Issues Branch in Leeds argued that there were conflicting decisions on attention in connection with domestic duties and invited me to prefer one of the lines of authority. In reply, the claimant's representative naturally preferred the line of authority that was more favourable to her client and to claimants generally. She requested an oral hearing and I acceded to her request. The hearing took place before me in the Commissioners' Court in London on 10 March 2006. The claimant attended and was represented by Ms Jade Allen of the Free Representation Unit in London. The Secretary of State was represented by Ms Gillian Harris of the Office of the Solicitor to the Department for Work and Pensions. I am grateful to the representatives for their clear and interesting arguments. At the end of the hearing, I told the claimant that I would increase her award of the care component to the middle rate. These are my reasons for that decision. I am sorry that it has taken longer to write them than I anticipated at the end of the hearing.

Interpretation – a broad scope

5. The scope of section 72(1)(b) is broader than the bare words might suggest. The search for a rational interpretation of that provision and its statutory predecessors has identified a broad scope. So much so that it can take by surprise those who are not familiar with the day-to-day application of the legislation - see the comments of Lord Mustill and Lord Slynn in *Cockburn v Chief Adjudication Officer* [1997] 1 WLR 799 at 803 and 806-807. Even to the initiated, it can be worthy of remark - see the comment of Mr Commissioner Howell in *CDLA/11652/1995* at paragraph 11 that recent decisions of the House of Lords had created an 'expanded universe' for claimants.

6. This expanded universe is shown in four aspects of entitlement. First in respect of the need: the attention need not be absolutely essential or even medically advisable; it is sufficient that it is reasonably required - *R v Secretary of State for Social Services, ex parte Connolly* [1986] 1 WLR 421, accepting the already established approach of the Commissioners, quoted at 424. Second in respect of the extent of the disablement that is relevant: the attention may substitute for a non-existent bodily function as well as assist in the performance of a bodily disfunction - *Mallinson v Secretary of State for Social Security* [1994] 1 WLR 630 at 639-640. Third in respect of the context in which attention may be given: it is not limited to the claimant's domestic life, but includes social and recreational life – *Cockburn* at 814-815. Fourth in respect of the overlaps within the conditions of entitlement: the courts have recognised an overlap between care and mobility and, within care, between attention and supervision – *Mallinson* at 641 and 638.

Overlap between care and mobility

7. Originally the overlap was between two separate social security benefits, attendance allowance and mobility allowance. Now it is between the care and mobility components of the single disability living allowance. In *Mallinson*, the House of Lords accepted that attention given while a claimant was walking out of doors could amount to attention for the purpose of care. And in *R(DLA) 4/01*, a Tribunal of Commissioners accepted that attention given as part

of a claimant's care could be taken into account in relation to the mobility component at the lower rate.

The tribunal's first error

8. In this case, the tribunal disregarded some of the help that the claimant required on the ground that 'the need for extra help usually occurs when the Appellant is outdoors and in unfamiliar places catered for by the lower rate mobility'. Ms Allen argued that the tribunal had misdirected itself. Ms Harris agreed, but suggested that the misdirection had not affected the outcome. I accept that this was a misdirection. I suspect that it did not affect the outcome, because the help the claimant needs is with seeing not with walking. That analysis is the one that was taken by Lord Woolf and Lord Browne-Wilkinson in *Mallinson*. The result is that the claimant does not need to rely on any overlap. She can rely directly on the assistance as an element of care.

Interpretation – control concepts

9. At the same time as the Commissioners and the courts have interpreted the scope of the legislation broadly, they have identified within the language concepts that impose conditions and limitations on the circumstances in which entitlement can be established. Look just at the concepts referred to by the House of Lords in *Cockburn*: action in the presence of the claimant (Lord Goff at 801); sufficient continuity between the claimant's disablement and the help given (Lord Mustill at 804); remoteness (Lord Hope at 823); help must be direct and immediate (Lord Clyde at 824); doing something to the claimant, not for the claimant (Lord Clyde at 824). And that does not include concepts used in passages quoted by the Law Lords from other cases.

10. These concepts reflect an underlying concern expressed by Lord Mustill in *Cockburn* (at 805):

> 'The courts I believe must bear in mind that the entire shape of social services legislation represents a strategy about the deployment of limited funds, and that to overstrain one element of the legislation in order to relieve someone whose case attracts sympathy will only divert resources from someone else whose case falls squarely within the intention of the scheme.

Empowering claimants

11. That passage is relevant to Ms Allen's argument on the scope of disability living allowance. She argued that, consistently with the policy of the Disability Discrimination Act 1995, disability living allowance should be interpreted and applied in a way that showed respect for equality and diversity and recognised that it was reasonable for the claimant to want to participate in activities to the fullest extent possible. I cannot accept that argument in its fullest extent. For a start, it is not permissible to use legislation that was not passed until 1995 to interpret the disability living allowance legislation that was originally contained in the Disability Living Allowance and Disability Working Allowance Act 1991. I must also, as Lord Mustill cautioned, resist the temptation to rewrite the legislation to reflect a different policy. As I said in *CDLA/5216/1998*:

'9. It would no doubt be commendable if legislation provided that financial and all other necessary resources should be provided to empower people to lead as full and as fulfilling a life as could be achieved despite any disabilities they might have. The cost to public finances precludes that possibility. Specifically, it is not the function of Disability Living Allowance. This Allowance concentrates on disability rather than on ability. It provides for payment on account of specific, limited needs that arise from disablement. That payment may meet part of the costs involved in enabling the claimant to overcome the consequences of the disablement, but that is as far as it goes towards empowerment. Inevitably, claimants and their representatives apply pressure at the boundaries of the Allowance. They try to extend the scope of the needs for which it provides and the disablement with which it is concerned. They try to move its focus away from disablement towards empowerment. That is only natural and I do not criticise them for it. It is the function of the Social Security Commissioners and the courts to ensure that the boundaries of the law are drawn in the proper place, having regard to the principles for interpreting legislation and to the authorities binding on them.'

12. However, I do not reject Ms Allen's argument completely. The care component of disability living allowance is concerned with attention, supervision and watching over that the claimant requires. This means reasonably requires: *Connolly*. The concept of reasonable requirement is one element of the broad scope given to disability living allowance and, at the same time, one of the control concepts, because it contains inherent within it a limit. The test of reasonableness allows decision-makers, including tribunals, to show appropriate respect for the wishes of claimants that their disabilities should not impede their enjoyment of life and their participation in their family and the community.

The tribunal's second error

13. One control concept that has sometimes be used is exclusion by context – cooking, shopping, cleaning, laundry, and domestic duties. Care that fell into these contexts has been excluded as outside the scope of the legislation.

14. In this case, the tribunal disregarded some of the help that the claimant required on the ground that 'some help required in and around the house involving laundry, ironing and gardening do not fall within the category of care needs for the purposes of disability living allowance'. Ms Allen argued that the tribunal had misdirected itself. The Secretary of State's written submission argued that there were conflicting decisions on whether care in the context of these categories was within the scope of disability living allowance and invited me to prefer those that said it did not. At the hearing, Ms Harris took a different approach. She accepted that it was wrong to reason from categories. The issue was whether the care required was attention in connection with the claimant's bodily functions. Nevertheless, she argued that the tribunal had not misdirected itself; the chairman had just used the language of categories as a convenient way of saying that the care needed did not satisfy the requirements of being attention in connection with a bodily function.

15. I accept the now concurring submissions that it is wrong to reason, and thereby limit the scope of disability living allowance, by reference to categories of task or activity. It is wrong to interpose additional questions which are not authorised by the legislation, like: is this a domestic chore? They are neither necessary nor justified. They only serve to raise irrelevant issues and create unnecessary difficulties of classification. In the oral hearing, for example,

Ms Allen argued that gardening was not a domestic chore but a recreation. On my approach, questions like that do not arise.

16. I reject Ms Harris' argument that the tribunal did not misdirect itself. As far as the record shows, the tribunal did exactly what the chairman recorded. Even if the tribunal did not misdirect itself on the law, it certainly misapplied it by disregarding much of the help that the claimant receives.

17. I must now explain these conclusions.

Reasoning from categories

18. Strictly, I do not need to deal with this argument, as it was not pursued by Ms Harris at the oral hearing. However, as a courtesy to the officer who wrote the detailed written submission, I will explain why I reject his argument from categories.

19. I reject this argument first because it is inconsistent with the wording of the legislation. The legal issue is whether the claimant is so severely disabled physically or mentally as to require, by day, frequent attention throughout the day in connection with bodily functions. There is no reference to the attention having to be in context of particular categories of task or activity. Nor is this implied in the statutory language. The wording provides no justification whatever for excluding from account help that would otherwise be attention just because it is given in a particular context.

20. I reject this argument second because it is inconsistent with the reasoning of the House of Lords and the Court of Appeal. The relevant decision of the House of Lords is *Cockburn*. That case concerned a lady who had arthritis and incontinence. As a result she soiled her clothes and bed linen. The issue for the House of Lords was whether the washing was attention in connection with her bodily functions. The House decided that it was not. I will deal with each of the Law Lords in turn.

21. Lord Goff (at 802) distinguished between laundry done as part of the same operation as changing clothes and bed linen from laundry done as a separate operation:

> 'In my opinion, in the case of an unfortunate woman who because of her arthritis cannot cope with her incontinence, the services of changing her clothes or her bedlinen and remaking her bed, even (as part of the same operation) rinsing out the soiled clothing removed from her, are sufficiently personal to fall within the section. But taking the laundry away to be washed transcends personal attention ...'

That passage is inconsistent with any reasoning by category. Laundry may or may not amount to attention depending on whether it is a separate operation from the other care given. Lord Goff had earlier (at 802) said that cooking and dusting were not to be taken into account, but it is clear from his reasoning that he was referring to cooking and dusting that were done for the claimant and not to assistance that the claimant might receive in order to perform those tasks for herself.

22. Lord Mustill (at 804) drew the same distinction between changing and washing as a single process and as separate processes:

> 'If the other person, having come in to strip the bed etc., had stayed to rinse the linen and hang it up to dry I believe that this, too, would have fallen within the section. Relying on earlier authority the Secretary of State describes laundry as a "household chore," and so it usually is. But I believe that this is too mechanical an application of the refined and substantial jurisprudence which has built up around the few words of section [72(1)(b)].'

As with Lord Goff, this reasoning is inconsistent with any reasoning by categories.

23. Lord Slynn (at 817) expressly rejected reasoning from categories:

> 'I do not consider, however, that the right approach is to begin by asking whether a particular act is normally regarded as a household chore and, if it is, to exclude it from what may constitute "attention" for the purposes of the section. Thus to say that dealing with soiled clothes is "laundry" or "washing" does not conclude the matter. That is not the right question. It must specifically be asked whether the particular washing is required in connection with bodily functions.'

As Lord Slynn dissented on the outcome in *Cockburn*, it would not be right to rely solely on his reasoning.

24. Lord Hope's reasoning appears to involve reasoning by category. However, I doubt whether that is correct. Having outlined the course of the proceedings, he said (at 821) that the issue required 'a careful analysis of the facts.' That would not be necessary if any laundry were necessarily excluded from consideration. He then defined the issue in terms of the statutory language rather than categories (at 822): 'whether the additional laundry which her daughter does for her constitutes attention in connection with her bodily functions'. It is true that he then said (at 823) that 'large areas of domestic work in respect of which the disabled are necessarily dependent on others are deliberately excluded' and that 'the help which she receives with her extra laundry is help in connection with a task, such as cooking, shopping or keeping the house clean, which the fit person need not and frequently does not perform for himself.' However, in stating his conclusion he reverted to the language of the statute and noted (at 823) that the washing was 'done not in her presence, but elsewhere', a point which would be unnecessary if he were using a category approach.

25. Lord Clyde (at 824) distinguished between assistance by doing something for the claimant and attention by doing something to the claimant and said:

> 'The personal nature of what is comprised in attention prompts the observation ... that the attention must be a service involving personal contact carried out in the presence of the disabled person. But that should not be understood as being so absolute a requirement as to exclude the changing of bedlinen which might be achieved without physical contact between the claimant and the person providing the service. Nor should it be understood to exclude an incidental activity which might occur outwith the presence of the claimant during the course of what is otherwise an attention given to an in the presence of the claimant.'

The final sentence of that passage is at least consistent with the distinction drawn by Lord Goff and Lord Mustill between single and separate operations, which as I have already said is inconsistent with reasoning by categories. Lord Clyde went on:

> 'But the laundry work *in the present case* seems to me to fall outwith a service that is directed to the person of the claimant.'

Note the words I have emphasised in that sentence. If Lord Clyde intended to endorse reasoning by reference to categories, those words would be redundant. They suggest rather, as the previous sentence suggests, that laundry might in another case be attention in connection with the claimant's bodily function.

26. To summarise, two Law Lords (Lord Goff and Lord Mustill) certainly rejected reasoning by categories (three if Lord Slynn is included), one (Lord Clyde) used reasoning that is consistent with rejecting that approach and although in places Lord Hope used the language of categories, parts of his reasoning are not consistent with that approach. In a sense, the reasoning of all the Law Lords was unrealistic, because it dealt with the case on the basis of the help that the claimant received rather than the help that she reasonably required. The House did not consider whether laundry was immediately required. No doubt, that reflected the way that the case was presented to it.

27. Although the decision of the Court of Appeal in *Ramsden v Secretary of State for Work and Pensions*, reported as *R(DLA) 2/03*, was not mentioned in the arguments before me, it is relevant. The issue was whether cleaning up after faecal incontinence amounted to attention in connection with the claimant's bodily functions. The Court analysed *Cockburn* and held that the tribunal had been wrong to exclude 'subsequent laundry of ... soiled clothes' from account on the authority of that case. The Court rejected a mechanical application of *Cockburn* and emphasised the need to apply basic principles of entitlement to the particular facts of the case. Its reasoning is inconsistent with a reliance on categories.

28. The Commissioners have regularly rejected argument by category. It would be tedious to list even the decisions to which I was referred in the arguments. I will limit myself to citing from them only the earliest (Mr Commissioner Rowland in *CDLA/0267/2004* at paragraphs 5 and 6) and the most recent (Mrs Commissioner Parker in *CSA/0993/2002* at paragraph 26).

29. The Secretary of State's written submission relied on two Commissioners' decisions as justifying reasoning by category - *CSDLA/0281/1996* (Mr Commissioner Walker) and *CSDLA/0314/1997* (Mr Commissioner May). If those Commissioners did endorse reasoning by category rather than by underlying principle, their decisions are with respect wrong. In so far as they relied on *Cockburn*, my analysis does not support them. In so far as they relied on statements in earlier cases, principally *R v National Insurance Commissioner, ex parte Secretary of State for Social Services* [1981] 1 WLR 1017 and *Woodling v Secretary of State for Social Services* [1984] 1 WLR 348, those decisions must give way to the later authority of the House of Lords in *Cockburn* and the Court of Appeal in *Ramsden*.

30. There is a further argument in the Secretary of State's written submission that I must deal with. This concerns severity of disablement. The representative argued that claimants who were able to undertake domestic tasks with some assistance are less severely disabled than those who cannot perform those tasks at all. To take account of assistance given in

performing those tasks for those able to do so would involve treating those claimants more favourably than those who are more severely disabled. In support, the representative cited a passage from the decision of the Chief Commissioner in *R(DLA) 5/05* at paragraph 12.7: 'It cannot have been Parliament's intention that less disabled people should generally be awarded higher levels of DLA than those who are more disabled.'

31. I reject this argument. Disability living allowance makes detailed provision for disablement. Entitlement depends on the nature and extent of the claimant's disabilities, the needs to which they give rise, and the frequency and pattern of those disabilities and needs. Tribunals and Commissioners regularly see claimants who have significant problems as a result of disabilities, but who do not qualify for a disability living allowance because they do not fit the criteria for an award. They also regularly see claimants who qualify despite having problems that many would regard as relatively minor. That contrast is the inevitable result of not providing benefit for anyone who needs help as a result of a disability. The proper issue is whether the legislation does or does not apply to the claimant's circumstances. I am grateful to be spared the unappealing task of grading disablement. Any attempt to do that is fraught with problems. Is the loss of hearing more or less severe than restricted mobility? How are combinations of disablements, such as impaired vision and reduced manual dexterity, to be evaluated? And so on.

32. As regards the quotation from the Chief Commissioner, his remark was heavily qualified by the passage from which it is taken. He was speaking only in the most general terms, having expressly acknowledged the difficulties of grading disabilities. With respect to the Chief Commissioner, I do not find his remark helpful in deciding this case. It does not provide any authority for reasoning by categories.

'Attention in connection with bodily functions'

33. The courts and the Commissioners have used many formulations to explain and to control the scope of this statutory expression. I have already listed those used by the Law Lords in *Cockburn.* They were devised in and for a context; they make sense when applied in that context. But they do not necessarily make sense or achieve their purpose of clarifying and controlling the scope of the disability living allowance when applied to a different context.

34. Take the distinction mentioned by Lord Clyde (at 824) between doing something to a person (which is attention) and doing something for a person (which is not). The distinction makes sense in some circumstances, for example, dusting, cooking or changing a baby. In those circumstances, it is a useful control concept. But it is not of general application. Take feeding as an example. For this function, there is no useful distinction between doing something to someone and doing it for them. Putting food into a claimant's mouth is both doing something to and doing something for a claimant who cannot manage this without help. The same is true of bodily function of sight.

35. Likewise the test of whether persons with no disability would perform a function for themselves and without assistance. That is a useful test in the case of a claimant who has difficulties dressing or washing. In that context, it controls the scope of the allowance. But when applied to someone who has no vision, it does not operate as a control at all, because seeing is almost always something that people do for themselves in any context.

36. Rather than twist the formulations that have been used in order to make them work for a claimant who has no vision, it is preferable to do as Lord Mustill did in *Cockburn* (at 804). Having criticised the Secretary of State's argument for being 'too mechanical an application of the refined and substantial jurisprudence which has built up around the few words' of the statute, he advised that 'it is better for concentrate on the words themselves, in the context of the actual dispute.' The judgment of Potter LJ in *Ramsden* (paragraphs 34-37) is an example of this approach applied to *Cockburn* itself. Relying on those authorities, I have sought to apply the language of the statute and the principles underlying the various formulations that have been devised.

37. 'Attention in connection with bodily functions' must be interpreted as a whole (Lord Bridge in *Woodling* at 352). That means that each of the words must be interpreted in the context of the others.

38. The bodily function in this case is sight. The claimant has no sight. No one can help her see; that is impossible. But, as Lord Woolf put it in *Mallinson* (at 636 and 640), it is possible to help a claimant who cannot see 'cope with his disability of being unable to see' and to 'provide the assistance to enable that person to do what he could physically do for himself if he had sight.' Or, as Lord Slynn put it in *Cockburn* (at 813-814), it is possible to do something that 'provides an alternative way of fulfilling the ... function' of sight.

39. The claimant's entitlement has to be based on an overall view in accordance with the decisions of the Commissioner in *R(A) 2/74, paragraph 35* and of the House of Lords in *Secretary of State for Work and Pensions v Moyna*, reported as *R(DLA) 7/03*. It is not determined on the basis of her needs on a particular day or a typical day.

40. What needs are taken into account? For domestic activities, the control is that of reasonable need under *Connolly*. Many of the practical difficulties attendant on lack of vision can be overcome by routine, technique and organisation, as these few examples show. The routine of wiping one's face after eating or cleaning teeth ensures that the face is left clean. There are techniques of eating that ensure a minimum of mess. And the organisation of clothes and the use of different numbers of ribbons tied to hangers assists the choice of a co-ordinated outfit. But, as the tribunal found, there are still needs that cannot be catered for in these ways.

41. For social and recreational activities, the controls are laid down by *Secretary of State for Social Security v Fairey*, which was decided and reported with *Cockburn*. The reasoning of the House of Lords was set out by Lord Slynn at 814-815.

- The basic test is reasonableness. Attention must 'be reasonably required both in its purpose and in its frequency.'

- The circumstances in which the attention must be required extend beyond what is 'essential or necessary for life. ... The test, in my view, is whether the attention is reasonably required to enable the severely disabled person as far as reasonably possible to live a normal life. He is not to be confined to doing only the things which totally deaf (or blind) people can do and provided with only such attention as keeps him alive in such a community.'

- What is the scope of a normal life? 'Social life in the sense of mixing with others, taking part in activities with others, undertaking recreation and cultural activities can be part of normal life. It is not in any way unreasonable that the severely disabled person should wish to be involved in them despite his disability.'

- What factors are relevant to reasonableness? 'What is reasonable will depend on age, sex, interests of the applicant and other circumstances.'

- 'How much attention is reasonably required and how frequently it is required are questions of fact for the [decision-maker].'

42. The distinction between single and separate operations is relevant. But it must be drawn sensibly. Take the example discussed at the hearing. The claimant went to a prayer breakfast and had assistance to select her meal and find a seat. Ms Harris analysed that into separate activities, arguing that only the help in finding a seat was relevant. I do not consider that so refined an analysis is appropriate. The sensible view is that the claimant needed help to find her way around and to select what she had to eat. In other words, getting a meal and a seat was a single operation.

43. In *Mallinson*, Lord Woolf (at 641) said that there were 'extreme situations' in which a claimant might require assistance that either did not arise from the claimant's disablement or was not reasonably required. He did not identify any examples. In *CDLA/8167/1995*, Mr Commissioner Howell mentioned (paragraph 20) 'mountaineering, windsurfing or parachute jumping'. At the hearing, we discussed attention given to allow a claimant to go mountain climbing. I do not relish the task of deciding that it is not reasonable for a claimant to undertake an activity that the claimant genuinely wishes to experience. I suspect that if an activity such as mountaineering every arises in a case, the attention is only of marginal significance in determining entitlement. In this case, nothing that the claimant does or wants to do could be described as extreme.

44. Mr Commissioner Howell has suggested a further restriction. In *CDLA/8167/1995*, he contrasted (paragraph 15) 'the loss of a perceptive or cognitive function' with 'a more basic reduced or impaired function such as ingestion of food, excretion or locomotion.' With respect, I do not understand why sight is less basic a function than locomotion. He then (paragraph 20) limited the scope of the *Fairey* formulation to 'the relatively mundane everyday aspects of functioning as a human being in ordinary life', citing Lord Woolf's reference to 'extreme situations' in support. Again with respect, I consider that that formulation is inconsistent with the express language of the House of Lords in *Fairey* and excludes assistance with many activities which could not by any stretch of the imagination be described as extreme.

Applying these principles to this case

45. The issue for me is whether the extent and pattern of the claimant's needs are sufficient to qualify for the care component at the middle rate on the basis that she needs attention frequently throughout the day.

46. I begin with the findings of the tribunal. It found that the claimant needed attention in connection with her bodily functions for a significant portion of the day in respect of bathing, dressing, applying make-up and checking mail. I accept those findings.

47. The tribunal commented that help with her computer and e-mail, television programmes and the hairdresser 'are not required daily.' That suggests that the tribunal accepted that those needs were reasonably required in connection with her bodily functions, but were only rejected because they did not arise daily. However, those needs could and should be taken into account in assessing the claimant's overall needs along with those taken into account by the tribunal and any others that are proved by the evidence.

48. I also have to take into account assistance that the claimant needs to find her way around unfamiliar places. This, remember, was wrongly excluded from consideration on the ground that it was covered by the mobility component.

49. The claimant provided a daily diary for the period from 9 to 30 June. That evidence has not been challenged. I accept it as an accurate account of what the claimant did and of the assistance she was given. I find that nothing that she did was 'extreme'. I also find that everything she did was part of living a normal life and that the help she received was reasonable in its purpose and frequency. I have no reason to doubt that the diary for those days is representative of the life the claimant leads generally. No one has suggested otherwise and given the nature of what she did it would be surprising if it were not representative.

50. I conclude that the claimant frequently requires attention in connection with the bodily function of sight throughout the day. That attention arises in respect of finding her way around unfamiliar areas and buildings, bathing, dressing, applying make-up, cooking, laundry and housework, shopping and going to the hairdresser, taking part in religious and social activities, visiting the homes of friends and acquaintances, and coping with the vicissitudes that life throws her way (such as the broken surge protector switch for her computer).

51. As to the period of the award, this must obviously be indefinite. There is no prospect that the claimant's disablement will reduce or that her ability to cope with it will increase.

Disposal

52. I allow the appeal, set aside the tribunal's decision, make further findings of fact and substitute, without a rehearing, the decision that the tribunal should have given.

Signed on original
on 28 March 2006

Edward Jacobs
Commissioner