

RAS/SH/13

HELPING CLAIMANT TO DO SOMETHING CAN
QUANTIFY, TO BE A 'DOMESTIC DUTY'
- HUSBAND (SOMEONE) TOO ETC. FOR B. AND P. /
HELPING HIM TO LACK CAN QUANTIFY

Commissioner's File: CDLA/3711/1995

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

Name: ~~Audrey Halliwell~~

Disability Appeal Tribunal: ~~Derby~~

Case No: D/41/051/93/0272

1. This is an appeal by the claimant against the decision of the Derby disability appeal tribunal given on 24 August 1994. The tribunal decided that the claimant was entitled to lower rate mobility component and lowest rate care component of disability living allowance from 11 November 1993 for life. At issue is whether the claimant is entitled to middle rate care component.

2. There is no doubt, as both parties agree, that the tribunal's decision is erroneous in law for insufficiency of findings of fact and reasons. I accordingly allow this appeal, set aside the tribunal's decision and remit the case for rehearing by a differently constituted tribunal. As there are too many matters of fact to be established it did not seem to me to be appropriate to grant the claimant's representative's request for an oral hearing.

3. I refer to the submissions by the adjudication officer and those on behalf of the claimant as to the tests to be applied and as to what activities count as qualifying attention. In general, I agree with the claimant's representative's comments (page 79 of the case papers) on paragraphs 16 and 17 of the adjudication officer's submissions.

4. The test in this case is whether the assistance in question is reasonably required in connection with the bodily function of seeing. If the assistance is provided for the claimant it seems to me to be likely to lack the personal

contact element referred to for example by Lord Clyde in the Cockburn case in the House of Lords (page 112 of the case papers). But if it is rendered in the claimant's presence and in such a way as to assist her to carry out the activity herself it could count. Shopping may be a good example. If someone goes shopping for the claimant it would not count. But if it is reasonably necessary, because of the claimant's impaired vision, for someone to accompany her and help her with her shopping by for example identifying particular commodities on the shelves and establishing their precise contents and price I do not see why, consistently with Mallinson, Fairey and Cockburn in the House of Lords, that should not count. By the same token, if it were reasonably necessary to assist the claimant with cooking - another activity referred to in one of the cases cited by the adjudication officer - then there is in my view no reason in principle why that assistance could not count. To the extent that earlier cases suggested to the contrary they must be taken to be overruled by the cases in the House of Lords to which I have referred. It follows that it is not enough simply to label the activity in question as for example "domestic". That does not end the matter. In the end, as Lord Slynn suggests in Fairey, what must be kept in mind is what is reasonably necessary to enable the claimant to live a normal life, though subject to the proximity test which was the essential element in Cockburn.

5. What is reasonably necessary is of course a question of fact as is the question whether a particular activity satisfies the proximity - personal contact test to which I have referred. Sometimes fine distinctions as to what activity qualifies and what does not will have to be made.

(Signed) R A Sanders
Commissioner

(Date) 4 December 1997