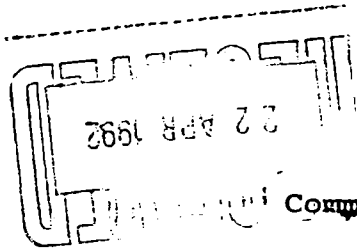


JBM/SH/12



Commissioner's File: CG/006/1990

SOCIAL SECURITY ACTS 1975 TO 1990
CLAIM FOR INVALIDITY ALLOWANCE
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Ruth Mary Brock-Gunn (Mrs)

Appeal Tribunal: Cwmbran

Case No: 9:5

[ORAL HEARING]

1. In my judgment the decision of the Cwmbran social security appeal tribunal dated 20 October 1989 is not erroneous in point of law.

2. This is an appeal by the adjudication officer against the decision of the appeal tribunal reversing the decision of the adjudication officer first involved in these appeals.

3. The case was heard by me at Cardiff Crown Court on 11 February 1992. Mr J Heath of the Solicitors Office represented the adjudication officer. Mr J P Colegate represented the claimant. To both of them I am indebted. The holding of an oral hearing at Cardiff Crown Court enabled the issues to be fully ventilated.

4. The facts of the case as found by the appeal tribunal are as follows:-

"Claimant's 19 year old son Richard is severely disabled and was away at a special school at Shrewsbury during 1988 and early 1989. He returns home every other weekend. While at home with his parents he needs 24 hours a day care, which means that claimant has to spend at least 5 hours before each visit and a further 5 hours after each visit in preparing for and cleaning up after his visits - washing, shopping for food, cooking and other matters only related to her son's visits - time she would not have spent in that way if he were not visiting home. She is clearly "caring" for Richard for over 35 hours each week". In respect of those matters and of the submission of the adjudication

officer dated 2 May 1990 the claimant has had the opportunity to comment and I have the observations in the case papers. No useful purpose would be served by my setting out these matters afresh here.

5. The relevant statutory provisions are section 37(1) and 37(8) of the Social Security Act 1975 together with Schedule 4 and Schedule 20. Regulation 4(1) of the Social Security (Invalid Care Allowance) Regulations made under section 37(8) of the 1975 Act are also of relevance. I set out regulation 4(1) of the Social Security (Invalid Care Allowance) Regulations immediately below:-

"A person shall be treated as engaged in and regularly and substantially engaged in caring for a severely disabled person on every day in a week if, and shall not be treated as engaged or regularly and substantially engaged in caring for a severely disabled person on any day in a week unless, as at that week he is, or is likely to be, engaged and regularly engaged for at least 35 hours a week in caring for that severely disabled person."

So far as relevant for the present purposes section 37(1)(a) of the 1975 Act provides as follows:-

" 37. (1) Subject to the provisions of this section, a person shall be entitled to an invalid care allowance for any day on which he is engaged in caring for a severely disabled person if -

(a) he is regularly and substantially engaged in caring for that person; .."

6. In his able address to me Mr Heath took me through the relevant statutory provisions and emphasised the provision as to 35 hours per week referred to in paragraph 5 above. He also took me through a number of relevant cases being R(A) 1/83, CS/726/49, CSA/17/89, R v. National Insurance Commissioner ex parte Secretary of State for Social Services [1981] 2 All E.R. 738 Woodling v. Secretary of State for Social Services [1984] 1 All E.R. 593. He also helpfully referred me to a number of dictionary definitions. Mr Colegate submitted a written submission in his helpful address to me dated 11 February 1992 and elaborated thereon at the oral hearing. I have added his written submission to the case papers and accordingly I see no necessity to set out those matters in fuller detail here. It is no disrespect to both advocates who appeared before me at the oral hearing that I do not set out in full their helpful submissions there made.

7. In my judgment the decision of the appeal tribunal is not erroneous in point of law. I would say at once that the decision is correct and depends on its own facts. In my judgment each case on the issues involved depends on the facts of that case and the view that the appeal tribunal before whom a case is heard take of the evidence given before them. The issue before me is

the construction of the word "caring" which appears in section 37(1)(a) and also in regulation 4(1) of the Invalid Care Allowance Regulations. Both Mr Heath and Mr Colegate referred me to the relevant decisions both of the Commissioner and of the court - they are I think to be regarded merely as background material as they are not authority on the legislation before me and on the whole I do not find the cases were any real help in construing the word "caring" as it appears in the above statutory provisions. Both Mr Heath and Mr Colegate helpfully referred me to differing dictionary definitions. The issue is one of construction of the word "caring" as it appears in the above relevant legislation as an ordinary English word. On the evidence before them in my judgment the appeal tribunal rightly concluded that the word "caring" for the purposes of regulation 4(1) rightly includes periods during which the severely disabled person is absent and that the time spent in preparation and clearing up in the instant case was reasonable in the circumstances of the instant case. In my judgment "caring" does not merely start when the severely disabled person arrives at the door of the carer's house. The time spent in preparation and clearing up following a visit by a severely disabled person is a question of fact in each individual case to be ascertained by evidence before the appeal tribunal and evaluated by them. The time a severely disabled person is at the carer's house is of course normally easily ascertainable. The preparation and clearing up time is a matter for investigation as indicated above in each case by the appeal tribunal. I need only say as to the retrospective question raised by Mr Colegate that it is the duty of the adjudication officer to apply the law as he sees it and that to my mind does not involve a retrospective change.

8. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision.

9. Accordingly the adjudication officer's appeal is disallowed.

(Signed) J.B. Morcom
Commissioner

(Date) 1 April 1992