

Attendance Allowance - D.M. requires in his medical opinion what attention required in connection with bodily functions & ten whether attention required amounts to frequent attention. NA sufficient for him to <sup>JUST</sup> say that in his medical opinion claimant can carry out majority of tasks.

WMW/JOB

Commissioner's File: CSA/30/87

APPEAL FROM DECISION ON REVIEW OF ATTENDANCE ALLOWANCE BOARD ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

1. I hold the decision of a delegated medical practitioner for and on behalf of the Attendance Allowance Board on review of their decision dated 23 May 1986 following upon a claim dated 10 April 1986 for an attendance allowance to be erroneous in law. I therefore set it aside. I remit the request for review to the Board so that they may deal with it under the provisions of regulation 39(6) of the Social Security (Adjudication) Regulations 1986.

2. In April 1986 the claimant sought an attendance allowance. A report by an examining medical officer produced a number of matters in respect of which she claimed she required attention by day and one by night. He recorded his opinion that attention was needed during the night hours once a night on average three nights a week for ten minutes at a time. The delegated medical practitioner on 23 May 1986 rejected the claim. On 25 August 1986 the claimant sought a review.

3. The delegated medical practitioner dealing with the review had before him both the original claim and the original report by an examining medical officer. He also had a report from the claimant's general practitioner which indicated no knowledge of special needs for attention/supervision during the day and that she could get in and out of bed on her own, taking time. It contained other material not significant for my decision. Finally the review delegated medical practitioner had two letters from those with a fair amount of knowledge of the claimant elaborating her needs attention. By a decision, without date so far as the copy before me is concerned, and similarly without acknowledgement that it was a decision for and on behalf of the Attendance Allowance Board, the delegated medical practitioner accepted the request for a review but determined on such review, as I understand his final paragraph, that the decision of 23 May 1986 be not revised. In so doing the delegated medical practitioner correctly directed his attention to the four primary considerations prescribed in section 35 of the Social Security Act 1975, which makes provision for attendance allowance. These four prescribed provisions require, in order to qualify for such an allowance, that there must be by day a requirement for frequent attention throughout the day in connection with bodily functions or continual supervision throughout the day to avoid

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substantial danger, and by night prolonged or repeated attention during the night in connection with bodily functions or continual supervision throughout the night to avoid substantial danger. He found, and upon the information before him was clearly entitled to find, and has, in my view, sufficiently expressed, an adverse decision on all these matters except the first. The grounds of appeal, as I understand them, are primarily directed to the first prescribed qualification. Further the submissions on behalf of the Secretary of State support the appeal in so far as the decision deals with that qualification. I therefore concentrate upon it alone.

4. In the decision on review the delegated medical practitioner notes from the examining medical officer's report that the claimant had control of bowels and bladder and needed no help to get on and off the toilet. He continues -

"Furthermore, she can, without assistance from another person, rise from her usual chair, walk, wash, get to the toilet, cut up food, eat and drink. It is recorded that she needs help to get into and out of bed, use stairs, dress, undress, bathe, and to adjust her clothes and with wiping herself at the toilet. [Her general practitioner] in his factual report ... states that [the claimant] can get in and out of bed on her own if she takes her time."

And then addressing himself to the particular prescribed condition under consideration he states -

"I have carefully considered [the claimant's] clinical condition and it is my medical opinion that she should be able to carry out the majority of the listed functions connected with daily living and I do not accept that she requires frequent attention through the day in connection with her bodily functions or that she has required such attention throughout the period relevant to the claim."

It is not clear from that, in my view, whether the delegated medical practitioner is or is not making a distinction between the "listed functions connected with daily living" and the "bodily functions" which alone are referred to in the statute. Further in so far as he refers to ~~a majority of the listed functions it is not clear which of them he~~ accepts as requiring attention or assistance. Finally he records it as his medical opinion that she should be able to carry out the majority of such functions. But that is not a matter properly susceptible of medical opinion in my judgment. What he required to do was find with the guidance of his medical skill, but as matters of fact, what bodily functions, if any, required attention during the day and then to express an opinion as to whether they in his view as matters of common sense and normal usage of English amounted to "frequent attention throughout the day". These errors in approach in my judgment vitiate his decision on that one, but all important, branch of the questions before him. Furthermore it is not clear on the face of his decision what if anything he made of the letters in support of a favourable decision on review. It is not necessary to deal with every piece of evidence but since the letters were before him and appear to be favourable to the claimant some reference should have been made to them indicative as to whether the

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delegated medical practitioner accepted or not, and if not then, in at least a word or two, why not. Thus it may be that he was of opinion that they added nothing to the information already before him. But something should have been said. That is a further error in law.

5. Since, at least broadly, I have accepted the submissions put before me both on behalf of the claimant and on behalf of the Secretary of State I do not take up space by dealing with them more specifically.

6. The appeal succeeds.

(signed) W M Walker  
Commissioner  
Date: 31 October 1988