

Att. Answer - via. DLS -
"Substantially in Excess"

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WMW/HJD

Commissioner's File: CSA/61/92

SOCIAL SECURITY ADMINISTRATION ACT 1992

APPEAL TO THE COMMISSIONER FROM DETERMINATION ON REVIEW OF ATTENDANCE ALLOWANCE BOARD ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: MRS L N JACKSON ON BEHALF OF ROSS M JACKSON

1. This claimant's appeal fails. I find no error of law in the determination given for and on behalf of the Attendance Allowance Board on 11 December 1991. This appeal is accordingly dismissed.

2. The claimant sought attendance allowance in respect of her son. After the usual reports by an examining medical practitioner (EMP) a delegated medical practitioner (DMP), acting for and on behalf of the Board, held the relevant statutory conditions not satisfied. The claimant sought a review and it is the determination upon that review, by another DMP, that is now before me. And I must start by pointing out that the only ground upon which a Commissioner may interfere with such a determination is that it has been shown to be erroneous in point of law: that is to say that it has applied the wrong law or has applied the right law wrongly - or has in general not given the claimant a fair opportunity of mounting her case and dealing with it. None of these grounds are, to my mind, made out in this case.

3. The DMP who made the review determination before me has accurately summarised the evidence from the claimant, her general practitioner, the EMPs, a health visitor, and others. It is clear that the claimant has a lot to do by way of attention and supervision of the child who suffers from Down's Syndrome. At the date of the review determination the child was barely one year old. The DMP went to find that the child required frequent attention throughout the day. He also clearly accepted that at night regular attention was required: in short in practical terms he accepted that one of the day and one of the night statutory conditions was satisfied. That might have been enough to warrant an allowance but there is a special provision that has to be satisfied in cases of young children. And that condition is not just that the statutory conditions be satisfied but that the attention or supervision involved be "substantially in excess" of that required for children of the same age and sex. It is at that stage, and at that stage alone, that the DMP held against the claimant. That is to say that it was only because the amount of attention or supervision involved in this case, however much it may have been in excess of that normally required for a child of the same age and sex, was not substantially so in excess. Accordingly the DMP could not find the special condition in respect of children to have been made out and so had to reject the claim. That is basically how the Secretary of State has submitted to me that the determination falls to be read. I have considered the matter for myself and have come to be of the same opinion.

4. I granted leave to appeal because it seemed to me that, at least at first blush, a fairly detailed critique had been mounted of the determination on behalf of the claimant which merited some answer. It was contained in the nine paragraphs of the grounds of appeal. However the more that regard is had to those grounds the more that it appears that they are simply elaborating the

attention, and it may be the supervision, that was required. Broadly the DMP accepted that such attention and supervision was required and, as it may be, even that such attention/supervision was in excess of that normally required for such a child but that, as matter of judgment, it did not amount to an exceptional excess. That is a matter ultimately for the medical judgment of the DMP to whom Parliament has exclusively confided such an issue. Whether I would agree with him or not is neither here nor there, he has expressed his view having approached the matter correctly and applied the correct law. I cannot interfere with a matter of the DMP's professional judgment.

5. Finally I should note that it is submitted for the claimant that the DMP erred by failing to specify what attention and supervision needs were additional to those normally required by a healthy baby and further failed to quantify the level of additional needs for the purposes of comparison with the needs of a child of the same age and sex. That is not what is required. It is because the DMP is a skilled professional that these issues are confided to his judgment. There is no need for such a judgment to be rationalised. Finally it is submitted that the DMP failed to deal with the day and night conditions separately so making it impossible to see why one or other of the conditions were not met. But that is not the point. As noted, the DMP effectively accepted that the conditions were satisfied but that the extra test in respect of young children about a substantial excess of attention or supervision was alone fatal. I therefore see no reason why the DMP should not have dealt with the matter as he did.

6. The appeal fails.

(signed) W M Walker
Commissioner

Date: 8 April 1993