APPLICATION FOR LEAVE TO APPEAL AND APPEAL FROM DECISION ON REVIEW OF ATTENDANCE ALLOWANCE BOARD ON A QUESTION OF LAW

Grounds on which an appeal may lie—requirement to give reasons for decision

A medical practitioner acting on behalf of the Attendance Allowance Board decided on review that a determination be not revised on the ground that the claimant had failed to satisfy him that he was "so severely disabled physically or mentally that he requires attention or supervision to, the extent specified in Section 4(2) of the National Insurance (Old persons and widows' pensions and attendance allowance) Act 1970".* The review decision on both the conditions contained in Section 4(2) of the Act was expressed in a single sentence which repeated the statutory language of both conditions prefaced by the words ". . . on the evidence I am not satisfied that . . .". There was a conflict of material evidence before the medical practitioner relevant to the question whether continual supervision was needed and, if so, whether to avoid substantial danger to the claimant or others.

Held that:

(1) A decision may be held to be erroneous in law if:
   (a) it contains a false proposition of law *ex facie*;
   or
   (b) it is supported by no evidence;
   or
   (c) the facts found were such that no person acting judicially and properly instructed as to the relevant law could have come to the determination in question;
   or
   (d) there has been any breach of the obligation to act according to the demands of natural justice;
   or
   (e) there has been a failure adequately to observe the requirement in regulation 14(2) of the National Insurance (Attendance Allowance) Regulations [S.I. 1971 No. 621] to set out the reasons for the review decision in writing.

(2) The obligation to give reasons for the decision imports a requirement to do more than only to state the conclusion, and it is doing no more than stating a conclusion if the determining authority merely states that on the evidence the authority is not satisfied that the statutory conditions are met. It is not obligatory to deal with every piece of evidence or to over elaborate, but the minimum requirement must at least be that the claimant, looking at the decision, should be able to discern on the face of it the reasons why the evidence has failed to satisfy the authority. This decision did not satisfy the requirement in regulation 14(2).

* Section 2(1) of the National Insurance Act 1972 replaces section 4(2) of the 1970 Act with effect from 21.8.72 (see the Schedule to S.I. 1972 No. 1230 (C.29) and paragraph 5 of Schedule 4 to the 1972 Act).

1. On 18th October 1971 it was decided for and on behalf of the Attendance Allowance Board on review that a determination of 2nd September 1971 be not revised. That determination, by a medical practitioner for and on behalf of the Attendance Allowance Board, was that the claimant had failed to satisfy him that he was "so severely disabled physically or mentally that he requires attention or supervision to the extent specified in Section 4(2) of the National Insurance (Old persons' and widows' pensions and attendance allowance) Act 1970".

2. The claimant has now applied to the Commissioner for leave to appeal from the decision of 18th October 1971 ("the review decision") on a question of law. I directed an oral hearing of the application, which was heard by me on 8th June 1972. The claimant was represented by his mother and Mr. M. R. Parke a member of the solicitor's office of the Department

of Health and Social Security appeared on behalf of the Secretary of State. It was confirmed that by consent I might determine any question of law as if the application were the appeal.

3. The claimant's application did not formulate any question of law; he is without legal training or advice. Mr. Parke did not seek to take any technical objection on that point, which leave to amend would plainly cure.

4. An appeal lies to the Commissioner only on the ground of error of law (see section 6(4) of the Act and regulations made thereunder). Consequently I could hold that the Board in the review decision had wrongly determined a question of law if I were satisfied that it contained a false proposition of law *ex facie*, or that it was supported by no evidence, or that the facts found were such that no person acting judicially and properly instructed as to the relevant law could have come to the determination in question (see *Global Plant Ltd. v. Secretary of State for Social Services* [1972] 1 Q.B. 139).

5. To these grounds there must be added the further considerations that any breach of the obligation to act according to the demands of natural justice, or failure adequately to observe the requirement in regulation 14(2) of the National Insurance (Attendance Allowance) Regulations 1971 [S.I. 1971 No. 621] to set out the reasons for the review decision in writing would support an appeal based on error of law. The claimant's case was in substance based on this last consideration.

6. The conditions for an award are contained in section 4(2) of the Act. The review decision on both conditions is expressed in a single sentence which repeats the statutory language of both conditions, prefaced by the words ". . . on the evidence I am not satisfied that . . .". The substantial body of the evidence for consideration consisted of medical reports, forms DS 4 and DS 4(R), both of which consist of questions for answer by the medical practitioners concerned, DS 4 having been completed by the claimant's medical attendant, DS 4(R) having been completed after a domiciliary visit by a medical officer of the Department. No question specifically refers to "supervision", or to the avoidance of danger, but question 7 in each form asks whether the claimant needs someone nearby every night and every day. I assume that this question and any answer to it bears on the question of supervision, although it is to be observed that section 4(2)(b) refers to "continual supervision", whereas "day" and "night" are words which refer particularly to the attention with which section 4(2)(a) is concerned.

7. The claimant's medical attendant answered question 7 in the affirmative, the medical officer of the Department answered in the negative. There was further evidence from the claimant's doctor that the claimant's vision was causing trouble.

8. I appreciate the difficulty of resolving different medical views in conflict, and of evaluating the weight to be attached to the claimant's statement of 14th October 1971 that he could not be left alone on his own, but required someone nearby night and day. Nevertheless a conflict of material evidence relevant to the question whether continual supervision was needed and, if so, whether to avoid substantial danger to himself or others, had to be resolved and decided. The obligation to give reasons for the decision in such a case imports a requirement to do more than only to state the conclusion, and for the determining authority to state that on the evidence the authority is not satisfied that the statutory conditions are met, does no more than this. It affords no guide to the selective process by which the evidence has been accepted, rejected, weighed or considered, or the reasons

for any of these things. It is not, of course, obligatory thus to deal with every piece of evidence or to over elaborate, but in an administrative quasi-judicial decision the minimum requirement must at least be that the claimant, looking at the decision should be able to discern on the face of it the reasons why the evidence has failed to satisfy the authority. For the purpose of the regulation which requires the reasons for the review decision to be set out, a decision based, and only based, on a conclusion that the total effect of the evidence fails to satisfy, without reasons given for reaching that conclusion, will in many cases be no adequate decision at all.

9. Mr. Parke further pointed out that the question of the claimant's poor eyesight in its relevance to the question of the need for supervision was not referred to, and he accepted that at least in regard to the claimant's case under section 4(2)(b) the reasons for its rejection were not adequately given.

10. I should add that the claimant's mother herself gave evidence of the claimant's poor sight, of frequent falls by the claimant in an outdoor toilet, of hospital treatment he received for a cut head and of burns received from a fall into a fire. Inasmuch, however, as evidence of these matters had not been brought to the attention of the medical practitioner who gave the review decision I do not take them into account in arriving at my decision.

11. My decision is that I give leave to the claimant to appeal. I allow the appeal and set aside the review decision of 18th October 1971. It follows that the matter is remitted so that fresh consideration may be given to the matter by the Attendance Allowance Board.

(Signed) R. J. A. Temple,
Commissioner.
