DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is an appeal by the claimant, brought by leave of a district chairman of tribunals, against the decision of the appeal tribunal held on 10 April 2003. I sit aside the decision of the tribunal but consider this to be an appropriate case for me to exercise the power contained in section 14(8)(a)(i) of the Social Security Act 1998. My decision is that the claimant is entitled to an award of the middle rate of the care component of disability living allowance for 3 years, from and including 12 October 2002.

2. The claim to DLA was made on 12 October 2002 and although passing reference was made, in the claim pack, to attention needs and to entitlement to the lower rate of the mobility component the substance of the decision of the tribunal and the grounds of appeal refer only to entitlement to the middle rate of the care component on the basis of supervision needs. No real argument has been presented at any time that entitlement to the highest rate of the care component has been made out neither has it been argued at any material time that the claimant is entitled to the mobility component. That much is apparent from the submission of the representative to the tribunal and from the subsequent grounds of appeal and I have proceeded on that basis. Save in relation to entitlement to the middle rate of the care component on the basis of supervision needs I accept and adopt the findings of fact, reasons and decision of the tribunal insofar as they relate to attention needs and the mobility component.

3. The tribunal made careful and comprehensive findings of fact which are not disputed and which I accept. They are as follows:-

"1. [The claimant] whose date of birth is 10/1/1968, made a claim for disability living allowance on 12/10/2002 (see pp. 4-39 in the papers).

2. In connection with this claim a medical report dated 2/12/2002 was obtained from [the claimant's] psychiatrist, Dr Kenn (see pp. 40-43 in the papers).

3. On 5/12/2002 a decision-maker on behalf of the Secretary of State decided on the basis of the above evidence that the claimant was not entitled to either component of disability living allowance from and including 12/10/2002 (see pp. 44-46 in the papers).

4. [The claimant] appealed against this decision on 10/1/2003 (see pp. 1-3 in the papers). The appeal was slightly late but the tribunal accepted that the appeal should be admitted.

5. [The claimant] has bipolar affective psychosis and is subject to the highest level of care in the community under the Care Plan Approach (see the report from Dr Kenn at p.40). She has suffered from this since 1988 and has had three or four hospital admissions, although she has not been admitted to hospital during the last five years. She did have a severe episode in 1998 when she was manic for a number of months but was not hospitalised on that occasion because she went to stay with a friend who looked after her. She has three children who are now aged 13, 10 and 8 respectively and this episode necessitated their being looked after by the local authority. The eldest child stayed away for 15 months, the youngest was in foster care for two and a half years and the middle child remains living with his father, although he does stay with the claimant every other weekend and for half the school holidays.

6. In between her manic periods, which tend to occur in the summer and around Christmas, [the claimant] feels very low which can be for four to six months at a time. She has taken three overdoses, although there have not been any incidents of self-harm within the last three years. She requires tranquillisers during her manic periods, in addition to her long-term medication (carbamazepine 200mg
twice a day). She can look after her own medication, except when she is unwell, although her father prompts her to get her prescription.

7. [The claimant] is not aware when she is becoming unwell and her mood can change quite quickly.

8. During a manic period she is unable to sleep and has to be forced to rest. She also does not eat or drink sufficiently, can dress inappropriately and can put herself at risk. For example, in 1996 she was involved in a road traffic incident during a manic period; she can also wander off for days at a time. She hallucinates and believes people are communicating with her through the TV or the radio.

9. When [the claimant] is low, she needs motivating to get out of bed, to wash and change her clothes, and to eat. Her concentration is poor and she forgets things (eg to collect the children from school or to buy food). She needs help with planning and preparing meals. She finds it difficult to deal with forms and bills and with people in authority and forgets/does not attend appointments.

10. [The claimant] sees her psychiatrist once every three months and speaks to her CPN on the telephone once a fortnight and sees her CPN once every three or four weeks. She sees her GP once every 4 to 6 weeks. Social Services continue to provide support (see the letter from Ms Shearer, Social Worker with the Children Looked After Team dated 7/4/2003) and her social worker rings her once a fortnight. If [the claimant] is unwell there will be more contact with these professionals. In addition, [the claimant] receives considerable support from her father and from friends. She sees her father two or three times a week and he phones her most days. When he visits he will help with collecting the children from school and looking after them and with the evening meal. He also helps with shopping. She generally goes to see her father at the weekends to have a break from being at home. Her eldest son will ring [the claimant's] father for help if he thinks it is needed – this happens about once a month. In addition [the claimant] sees friends most days so that she is not on her own. She goes to a Social Centre twice a week and has friends from there. The Centre would contact her if she did not attend."

The findings of fact of the tribunal are entirely consistent with the weight of evidence before them and highlight the essential issue which is whether the claimant was “...so severely disabled...mentally [no physical disablement being placed in issue] that, by day, she required from another person... continual supervision throughout the day in order to avoid substantial danger to herself or others... “, section 72(1)(b)(ii) Social Security Contributions and Benefits Act 1992. I pause at this point to note that the legislative provision in issue necessitates consideration of what is reasonably required not what in actuality is provided either in terms of attention in connection with bodily functions or supervision. What is determinative is not the degree of attention that is provided or the amount of supervision although attention and supervision that in reality exist in any given case may lead to reasonable inferences being drawn as to what is reasonably required.

4. The decision of the tribunal was a majority one, upholding the decision under appeal that there was no entitlement to DLA from 12 October 2002. The majority views of the tribunal were that “the arm’s length approach of monitoring [the claimant] by phone did not amount to supervision. They noted that she generally took her medication on her own and that her psychiatrist has stated that over the last 12 months her condition had remained stable. The majority did accept that there were periods when she was more at risk but their conclusion was that continuous supervision was not generally needed”. Those views are in stark contrast to the dissent of the chairman, expressed as follows:-

“The minority of the tribunal, however, concluded that the conditions for an award of the middle rate care component were met because in her view [the claimant] reasonably required continual supervision from another person throughout the day in order to avoid substantial danger to herself. In her view the evidence showed that [the claimant] was receiving considerable informal support and monitoring on a
daily basis, as well as monitoring by her CPN and input from other professionals. The minority member noted that [the claimant] is not aware when she is becoming unwell and that her mood can change quite quickly. She has put herself at risk in the past (eg standing in the middle of the road trying to stop the traffic or wandering off for days when she does not eat or sleep) and her children have had to be looked after by the local authority in the past when she has been ill. Moreover, she continues to receive support from social services to help her with the children and so that they can monitor the situation. The minority member accepted that [the claimant’s] situation is more stable at the moment than it has been in the past but in the minority member’s view this is because of the considerable network of support and monitoring that has evolved; without this in the minority member’s view there is a real danger that [the claimant’s] condition could rapidly deteriorate without her being aware of this.”

5. The grounds of appeal contend that the tribunal erred in law in failing to provide sufficient reasons for the majority decision. Reliance is placed upon the undisputed findings of material fact of the tribunal which do not, it is contended, take account of the fact that the claimant’s condition appeared relatively stable but only with the benefit of the network of support and monitoring identified by the tribunal and without the supervision effectively thereby provided the medical condition of the claimant would give rise to substantial danger to herself or others. Attention is drawn to the fact that the claimant has endangered herself by running out into the road, by self neglect in the form of wandering the streets, without eating or sleeping for days at end, and the fact that her children had to be taken into care because of the effects of her condition. It is, in essence, contended that the medical condition of the claimant is such as to render her particularly vulnerable given that she is not aware when she becomes ill and that she suffers from regular and frequent episodes of manic behaviour. The fact that the claimant took overdoses, but some years ago, is said to be not indicative of any real improvement in her condition but attributable to the forms of supervision in the way of monitoring and close observance of her by her father, friends and psychiatric professionals. The fact that some of the monitoring is done in the form of telephone calls from her father is said not to be determinative since that is not the only form of supervision provided and in any event is at least indicative of supervision needs, bearing in mind also the terms of the legislative provision in question to which I have referred above.

6. The appeal is not supported on behalf of the Secretary of State who relies upon R(A)1/88 to the effect that supervision over the telephone would not be sufficient. That is not disputed on behalf of the claimant who draws attention, however, to the need for supervision indicated by the frequent and regular contact that the claimant has with members of her support network and, not least, by the fact that the claimant has been assessed as needing the highest level of Care in the Community under the Care Plan Approach, as found by the tribunal. The Secretary of State’s representative argues that the support offered by the claimant’s father, for example preparing a meal for her, looking after the children and picking them up from school, is no more than part of the “normal” family life and does not demonstrate a need for continual supervision.

7. The tribunal identified, in paragraph 10 of the findings of material fact, what is to my mind effectively a widespread and significant support network of which the claimant’s father was but one part. The fact that some of the ways in which he provided assistance might otherwise have fallen within the context of “normal” family life does not alone mean that no supervision needs existed but has to be considered in context of the claimant’s overall needs for supervision and what inferences might reasonably be drawn in relation to that from the support network indicated by the tribunal. Additionally the claimant did not rely, as a basis for entitlement, only upon “supervision” provided by her father over the telephone and, again,
the significance of that is not whether it actually amounted to supervision but what, viewed in
close monitoring not only with the day to day pressures of life to enable her to remain well, by
taking the necessary medication, but also to identify when further active involvement was
Taken at face value the claimant’s condition and her symptoms appeared stable but in
reality there was more to it than that, as identified by the chairman. The tribunal thereby, and
in my judgment, erred in law in the manner contended for on behalf of the claimant and I set
aside the decision.

9. As I have indicated above, however, the tribunal’s findings of material fact are not in
dispute and are such that it is proper for me to rely upon them as a basis for my decision. The
claimant in my judgment falls within the ambit of R(A)1/83. Her medical condition is such
that it may give rise to substantial danger or others – evidence for that is her self-neglect, the
fact that her children have been taken into care (clearly for their own protection) and her lack
of awareness of day to day dangers. The danger in my judgment is not too remote a
possibility given that the claimant is unaware when she becomes ill and fails to take her
medicine. The fact that the danger has been obviated by the support network provided is not
material; the danger still exists as a real and significant risk. The need for supervision on the
part of a third party to avoid that danger is in my judgment made out because of the lack of
awareness of the claimant of her own condition, as it is from time to time, and steps taken to
improve that condition in times of relapse. The need for supervision in my judgment is
continual given that her episodes of manic depression are not predictable and cannot, then,
reasonably be foreseen. Having regard to these factors I accept the minority view of the
tribunal which in my judgment is entirely consistent with entitlement to an award of the
middle rate of the care component on the basis of day supervision needs. A limited period
award is appropriate since although the claimant’s condition has subsisted for some time she
is under medical supervision and treatment and there is some potential for improvement.

(Signed) S J Pacey
Commissioner

(Date) 26 January 2004