

(for Blade file)

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RAS/1/LM

Commissioner's File: CA/236/92

DSS File: SD450/5914

SOCIAL SECURITY ACTS 1975 TO 1990
SOCIAL SECURITY ADMINISTRATION ACT 1992

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

1. This appeal is on behalf of a congenitally deaf boy now 15 years old. He was in receipt of an attendance allowance, at the lower rate, on the basis of satisfying the day attention condition from November 1986 until he turned 12 on 18 February 1990. His renewal claim was turned down. That rejection was confirmed by a determination on behalf of the Attendance Allowance Board dated 26 February 1991. This appeal is against that determination.

2. This case is indistinguishable from CSA/113/91. There the Commissioner decided that the determination on behalf of the Board was erroneous in law because of the failure to take account of the attention required to enable the deaf child in that case to communicate effectively. The Commissioner said -

"7. Mrs Jones and Mr Ferrie were really at one in submitting that the DMP had not addressed the central issue here properly. Because the child could lip-read, had a hearing aid and could to some extent speak, no doubt some rather less amount of attention than formerly was required in order to achieve communication with her. That is the only matter the DMP determined and, for all that I can say, determined it correctly. But as they pointed out the question is not to be determined by the degree of communication that can be achieved but by the amount of attention required in order to achieve it. And the evidence before the DMP clearly indicated that attention was required on virtually every occasion when communication was to be had with the child. That is because, on account of his deafness, it was necessary to go and make some form of visual contact in order to commence communication at all. Normally, no doubt, one might speak to a child, or call its name and, hopefully, gain a response. But here, as was explained, perhaps more fully to me, unless the child happened to be looking at the individual wishing to effect communication and, from their relative positions and other factors such as lighting, could appreciate that he was being addressed it would be necessary first to make contact, usually physically. I should add that as the

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aspect was not dealt with in evidence, even before me, I am unaware of any problem in starting communication in the reverse direction, from child to another person. Accordingly I have concentrated solely upon the attention required in gaining the child's co-operation in the two-way process of communication. The DMP has not considered that aspect of the day attention condition and, given the evidence before him, it is clear that he should have considered it. That is an error of law and indeed is the sole error of law upon which I have set aside his determination."

Evidence to the same effect was before the Board in this present case. The Secretary of State's representative submits that, following CSA/113/91, this appeal should be allowed. I agree. I allow the appeal for the same reasons as those explained in CSA/113/91 and I set aside the determination. Pursuant to regulation 23(2)(a)(i) of the Social Security (Introduction of Disability Living Allowance) Regulations 1991 I give the decision which I consider the Board should have given namely that a certificate be issued for the lower rate of attendance allowance with effect from the expiry of the certificate dated 11 September 1986 until the child's 16th birthday.

(Signed) R A Sanders
Commissioner

Date: 28 May 1993