

Response on behalf of Master Declan Xxxxxx against the DLA Decision with regard to a “High Rate Mobility Allowance”

Introduction

We (Declan’s parents) have examined the criteria laid down by the current legislation of the Social Security Contributions and Benefits Act 1992, Section 73, part 1 to 4 with regard to qualifying for the higher rate of the mobility component of DLA and we feel Declan does satisfy the required conditions and therefore should be awarded such status.

The Criteria

Our understanding of this Statute Law is that one must be “suffering from a physical disablement...resulting in one’s physical condition as a whole being such that;

1. You are unable to walk.
2. You are virtually unable to walk.
3. The exertion required to walk would constitute a danger to your life or would be likely to lead to a serious deterioration in your health.
4. You have no legs or feet.
5. You are deaf and blind
6. You are entitled to the highest rate care component and you are severely mentally impaired with extremely disruptive and dangerous behavioural problems.

We understand that Declan in order to qualify for High Rate Mobility must satisfy one of the above conditions.

Declan’s Case

We feel Declan’s case for High Rate Mobility Allowance is justified as he satisfies the following criteria;

You are virtually unable to walk

Declan can walk but only to a limited extent. Declan’s behavioural difficulties stem directly from his Autistic Spectrum Disorder (ASD) and Oppositional Defiance Disorder conditions. Behaviour is one of the main issues that restrict his walking. We state that ASD is a physical cause because it is a disorder of the brain development and therefore should be classed as so.

Declan is unable to walk 10 yards without interruptions, distractions and/or incident. Other conditions that compound Declan's difficulties in walking are his impulsive and physical over-activeness, again these complications are brought on directly by his ASD.

Declan will often and randomly go into a tantrum without notice. This is due to his ASD and Oppositional Behaviour condition. He will lie on the ground kicking and screaming without any regard to safety of himself or others. He will kick and punch out at anything passing by, whether a person or object and will try and run away from his supervisors.

Declan finds a vast number of day-to-day environmental surroundings very distressing. These include various loud noises; bright lights; crowds and unfamiliar people; objects and situations. A direct result of Declan's ASD is that he has difficulties with many external sensory stimuli and this inevitably results in very bad behaviour while outside.

Declan will encounter temporary paralysis (refusal to walk) during any attempt to bring him out doors. We currently limit our out door movements with Declan down to a minimum which is having a detrimental effect on his general life and social skills.

Other ASD causes which directly affect Declan's walking are his inability to distinguish danger of any sort; his clumsiness; poor balance; lack of coordination; his anxiety and fearfulness of the outdoor environment and the unknown.

Severe Mental Impairment

We understand to satisfy this section Declan must pass the 5 criteria's laid out by the regulations;

- i) *Declan must be entitled to the higher rate of care component of DLA;*

Yes

- ii) *Declan suffers from "a state of arrested development or incomplete physical development of the brain which results in severe impairment of intelligence and social functioning";*

We refer to the relevant case number (C/DLA/2288/2007) where Social Security Commissioner Jacobs made the decision which held that tribunals and decision makers, where they accept that the claimant suffers from autism, must also conclude that he/she has either a state of arrested development or incomplete physical development of the brain.

Declan, as a direct result of his ASD, suffers from a severe impairment of intelligence and social functioning.

Declan's school reports demonstrate that he is currently running between 2-3 years behind his peers when it comes to his academic intelligence. As Declan is 8 years old now, he has the educational skills of a child who is just starting school.

Declan shows a further restriction in his development when it comes to his "useful intelligence". We would state that Declan has the social and behavioural skills of a child who is 3-4 years old.

Declan demonstrates severe impairment of intelligence where it relates to a "total lack of any sense of danger and inability to calculate risk". We refer to the relevant case (C/DLA/3215/2001) which concurs that a child can be considered to have severe impairment of intelligence when displaying these conditions.

iii) *Declan must exhibit disruptive behaviour which is "extreme";*

Declan suffers from a number of disabilities that cause disruptive behaviour. These include ASD and Oppositional Defiance Disorder.

We draw reference to Declan's school reports and in particular to correspondence from "Nexxxxx xxxxxxxx xxxxx School" dated xx/xx/08. It refers to Declan "exhibiting challenging and aggressive behaviours" and continues by stating that Declan "hits and kicks out at those with him and passers by". We have numerous reports from Declan's school where he has physically harmed members of staff and/or his fellow class members.

We do not have one day pass where Declan has or has tried to commit harm to someone or to something. It is essential that Declan is fully supervised (minimum 2 adults) when in any outdoor environment and/or when in company with other persons.

When Declan is taken outdoors, his anxiety levels become increased and which in turn leads to his disruptive behaviour becoming even more aggressive and spasmodic. We understand that the word "extreme" in this case is defined as connoting behaviour which is wholly out of the ordinary. We are therefore satisfied that Declan's behaviour would satisfy this criterion.

- iv) Declan regularly requires another person to intervene and physically restrain him to prevent him causing physical injury to himself or other or damage to property;

As stated in the last criterion; Declan requires a minimum supervision of 2 adults when placed in an outdoor environment. Declan requires this level of care amongst other reasons to restrain him as and when he does go into a tantrum or shows violent behaviour.

During Declan's latest annual educational review it was requested by the school, and thereafter granted by Leicester County Council, that Declan should receive additional staffing levels to cope with his physical and aggressive behaviour.

Referring to the decision (C/DLA/2054/1998), where the Commissioners states that the word "Requires" should mean "Reasonably Requires" and that the purpose of such intervention must be to prevent physical injury or damage from occurring. There is no requirement that injury or damage would inevitably result.

- v) Declan's behaviour is so unpredictable that he requires another person to watch over him whenever they are awake;

Declan is never left unsupervised at any time of the day or night while he is awake. In section IV, we have drawn the attention to the additional staff being placed with Declan at his school to ensure he is monitored at all time.

At home and during outdoor excursions, Declan has a minimum of 2 adults with him at anyone time. Declan's unpredictable disruptive behaviour can become so uncontrollable it requires 2 adults to be able to restrain him from causing danger and injury to persons or property.

Declan is at a size now where his strength is making it more and more difficult to restrain him, especially outdoors. In view of this, we now ensure that at least one of the 2 adults supervising Declan during outdoor activities is male.

Summary

We feel that any further assistance the DLA can provide us will have a tremendously positive effect on Declan's quality of life, as well as that of his carers.

Declan's claim to seek the high rate of the mobility component is, in our view, fully justified and warranted on merit. Declan's case shows that he does satisfy the conditions in accordance to the regulations by Social Security Contributions and Benefits Act 1992, Section 73, parts 1 to 4 and therefore Declan should qualify for the high rate of the mobility component of DLA.

10TH June 2008