

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PATRICIA A. LONG and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Louisville, KY

*Docket No. 00-1164; Submitted on the Record;  
Issued October 29, 2001*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant was entitled to augmented compensation after her dependent child became 18 years of age on February 29, 1994.

The Office of Workers' Compensation Programs accepted appellant's claim for major depression, aggravated hiatal hernia and reflex esophagitis. Appellant stopped working on October 21, 1993 and did not return. She was placed on the periodic rolls and received augmented compensation for her daughter, Jamell Long, who was a minor and disabled. On February 29, 1994 her daughter turned 18 years of age. Appellant continued to claim her daughter as a dependent on her CA-1032 forms.

By letter dated March 9, 1998, the Office requested that appellant submit a current medical report from her daughter's physician addressing her medical status which rendered her disabled. The Office stated that the doctor should explain the status of appellant's daughter living arrangement and advise if there was a chance that her daughter would be able to function on her own.

Appellant submitted a "Verification of Disability/Handicapped Status," from Beverly McDonald, a Local Resource Coordinator from Seven Counties Services Kentucky Impact, dated March 24, 1998. Ms. McDonald opined that appellant's daughter was disabled to the extent that she was unable to "engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last for a continuous period of not less than twelve months." She also stated that appellant's daughter was handicapped and her physical and mental impairment was "expected to be of long, continued and indefinite duration and substantially impeded her ability to live independently."

Appellant submitted an unsigned report, "O.W.C.P. Response to Dependent Questions" dated March 9, 1998, which contained the diagnosis, hypothyroidism ADHA with mild diffuse brain damage, prescribed medication, and stated that no change was expected in appellant's daughter's mental and emotional disorder. The report stated that appellant's daughter lived with

and was cared for by her mother, that she had the above condition since she was two years old and would always need a “strong network” of care providers. The report also stated that appellant’s daughter was not capable of handling finances, that she could grocery shop by list only, and there was no chance that she would be able to function autonomously, free of all support systems and a network of care providers.

The first page of a letter dated August 3, 1998 indicated that appellant’s daughter was entitled to receive monthly disability benefits from Social Security beginning December 1997.

On April 21, 1999 the Office proposed to terminate appellant’s augmented compensation for her daughter because appellant did not submit any medical evidence to support that her daughter was disabled and was incapable of self-support due to a physical or mental disability.

By decision dated June 8, 1999, the Office finalized the proposed termination of augmented compensation for appellant’s daughter, stating that appellant failed to provide medical evidence in support of her daughter’s disability and inability for self-support. The Office stated that the augmented compensation appellant had received since February 29, 1994 would be subject to recovery as an overpayment.

By letter dated June 12, 1999, appellant requested an oral hearing before an Office hearing representative which was held on December 15, 1999. At the hearing, appellant’s daughter, Pamela Long, explained that her mother had difficulty coping with Jamell’s illness and had difficulty in obtaining the nebulizer, a breathing machine, and that Jamell’s condition added to her problems. Ms. Long stated that her sister graduated from high school. She stated that, although willing to do so, her sister could not carry out tasks she was asked to do and had tried to work several jobs but was unable to keep a job for more than a week. Ms. Long stated that her sister read and watched television. She also stated that her sister did not take any medication. Appellant testified that her sister had not received medical treatment since August 1999 because she no longer wanted to go to the doctor.

Appellant submitted a medical report from her daughter’s treating physician, Dr. Greg Taliaferro, a psychologist, dated August 9, 1999. In his report, Dr. Taliaferro stated that appellant’s daughter’s health problems began when she experienced a high fever when she was two or three years old resulting, in part, in poor vision. He stated that appellant’s daughter had severe behavior problems in school and was hospitalized and placed in a residential facility several times. Dr. Taliaferro stated that psychological assessment performed on appellant’s daughter in the early 1990s showed that she had low average intelligence, poor visual-perceptual and spatial-visualization skills and poor analytical abilities for figural stimuli. He stated that appellant’s daughter had two areas of deficits in that she became easily overwhelmed by too many demands placed on her and had difficulty maintaining adequate work relationships. Dr. Taliaferro noted that, according to appellant, when appellant’s daughter was not watched, she would stop performing a task she was asked to do and watch television or glance through magazines. He stated that appellant had difficulty performing visual-motor tasks. Dr. Taliaferro observed that during their conversation appellant had difficulty focusing on tasks for more than a few moments and that she fidgeted in her seat and was easily distracted by extraneous stimuli. He diagnosed moderate-to-severe attention-deficit hyperactivity disorder and stated that

appellant's daughter "appear[ed] to be unable at th[e] time to engage in gainful employment or to establish age-appropriate relationships."

By decision dated February 10, 2000, the Office hearing representative affirmed the Office's June 8, 1999 decision.

The Board finds that appellant was entitled to augmented compensation after her dependent child became 18 years of age on February 29, 1994.

Section 8110(a)(3)(B) of the Act which provides for augmented compensation defines a dependent, in pertinent part, as an unmarried child, while living with the employee or receiving regular contributions from the employee, who is "over 18 years of age and incapable of self-support because of physical or mental disability."<sup>1</sup>

The employee may establish her child who has turned 18 years old is incapable of self-support by submitting a medical report from her physician describing the mental or physical disability which caused the child's incapacity for self-support.<sup>2</sup>

In the present case, contrary to the Office's determination, Dr. Taliaferro's August 9, 1999 report is sufficient to establish that appellant's daughter, Jamell, is incapable of self-support. Dr. Taliaferro explained that appellant's had physical and mental problems since childhood, that she had difficulty focusing on a few tasks for more than a few moments and that she had deficit areas of being overwhelmed by many tasks and being unable to maintain adequate work relationships. He also stated that she had low average intelligence, difficulty with visual-motor tasks and had poor visual-perceptual and spatial-visualization skills. Dr. Taliaferro observed that appellant's daughter was easily distracted by extraneous stimuli. He considered that appellant's daughter had been unable to hold any job in the past for more than a week. Dr. Taliaferro diagnosed moderate-to-severe attention-deficit hyperactivity disorder and opined that appellant was unable to engage in gainful employment or to establish age-appropriate relationships.<sup>3</sup> He sufficiently explained his diagnosis and his opinion on appellant's daughter's inability for self-support to establish that appellant's daughter is a dependent within the meaning of the Act.

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<sup>1</sup> 5 U.S.C. § 8110(a)(3)(B); see *Peggy R. Thompson*, 52 ECAB \_\_\_\_ (Docket No. 00-2657, issued June 13, 2001).

<sup>2</sup> *Teresa B. Tencati*, 21 ECAB 398, 402 (1970).

<sup>3</sup> The other evidence appellant submitted consisting of the March 24, 1998 disability verification is not probative because there is no indication that Ms. McDonald is a physician as defined under the Act and the March 9, 1998 "O.W.C.P. Response" is not probative because it was not signed. See 5 U.S.C. § 8101(2); *Diane Williams*, 47 ECAB 613, 616 n.7 (1996).

The February 10, 2000 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC  
October 29, 2001

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member