

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 80-421
	:	
of	:	<u>August 27, 1980</u>
	:	
GEORGE DEUKMEJIAN	:	
Attorney General	:	
	:	
Jack R. Winkler	:	
Assistant Attorney General	:	
	:	

SUBJECT: “ASSISTIVE DEVICES”—Prescription eyeglasses, contact lenses and other ophthalmic goods are not assistive devices within the meaning of the Song-Beverly Consumer Warranty Act unless they are sold for those who are legally blind and in some manner assist the limited vision of those so disabled.

The Honorable Frank Vicencia, Assemblyman, Fifty-Fourth District, has requested an opinion on the following question:

Are prescription eyeglasses, contact lenses and other ophthalmic goods “assistive devices” as that term is defined and used in the Song-Beverly Consumer Warranty Act?

CONCLUSION

Prescription eyeglasses, contact lenses and other ophthalmic goods are not assistive devices within the meaning of the Song-Beverly Consumer Warranty Act unless they are sold for those who are legally blind and in some manner assist the limited vision of those so disabled.

ANALYSIS

The Song-Beverly Consumer Warranty Act¹ (the “Act”) imposes certain warranty obligations upon the retail sellers of consumer goods. The Act was recently amended by Senate Bill No. 1190² (SB 1190) to add additional warranty obligations upon the retail sellers of “assistive devices.” We are asked whether prescription eyeglasses, contact lenses and other ophthalmic goods are assistive devices within the meaning of the Act.

Section 1791(m)³ of the Act added by SB 1190 provides:

‘Assistive device’ means any instrument, apparatus, or contrivance, including any component or part thereof or accessory thereto, which is used or intended to be used, to assist a physically disabled person in the mitigation or treatment of an injury or disease or to assist or affect or replace the structure or any function of the body of a physically disabled person.’ (Emphases added.)

We note that this definition limits assistive devices to those which assist “a physically disabled person” in a particular manner including assisting “any function of the body.” Clearly prescription eyeglasses and contact lenses assist a function of the body. But are those who wear them “physically disabled persons” within the meaning of the Act? Since the Legislature did not define the latter term in the Act we are confronted with a problem of statutory construction.

The applicable rules of statutory construction were summarized in *Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230 as follows: (Omitting the citations and quote punctuations.)

“We begin with the fundamental rule that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent the court turns first to the words themselves for the answer. We are required to give effect to the usual, ordinary import of the language employed in framing them. If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose and a construction making some words surplusage is to be avoided. When used in a statute words must be construed in context, keeping in mind the nature and obvious purpose of the statute when they

¹ Civil Code sections 1790-1795.7.

² Chapter 1023, Statutes of 1979.

³ All section references are to the Civil Code unless otherwise indicated.

appear. Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole.”

The clear purpose of the Act is to protect consumers by providing buyers of consumer goods through normal retail channels with the legal means of obtaining what they paid for through appropriate warranty protections. SB 1190 singled out a particular kind of consumer goods for special warranty protections. This is the implied and express warranty that both new and old assistive devices sold at retail are “specially fit for the particular needs of the buyer.” This is in addition to the warranty of fitness which attaches to the retail sale of new consumer goods under section 1792.2 of the Act. By its definition of “assistive device,” *supra*, the Legislature clearly intended to provide conditional warranty protections to a particular class of buyers, namely “physically disabled persons” in their retail purchase of a particular kind of merchandise, i.e., assistive devices. As we have already noted, however, it is by no means clear just whom the Legislature intended to include as “physically disabled persons” when it used these words twice in its definition of “assistive device.”

In ascertaining legislative intent Moyer instructs us to turn first to the words used in the statute for the answer. The key word requiring further definition is “disabled.” Moyer states we are to give effect to the usual ordinary import of the language used. Webster’s Third New International Dictionary defines “disabled” as “incapacitated by or as if by illness, injury or wounds: crippled.” The use of the word “disabled” in the statutory definition connotes a degree of impairment which incapacitates a body structure or function. Had the Legislature intended to include those with less severe conditions it would have used a less emphatic word such as “impaired” or “handicapped” which did not indicate the severity of the condition.

We believe this semantic analysis accords with use of the word “disabled” in ordinary parlance as applied to visual impairment. Blindness is generally regarded as a disability but simple myopia is not because it is easily corrected by the use of eyeglasses. The Legislature has recognized this dichotomy with respect to the visually handicapped in other contexts.

Civil code section 54 provides:

“Blind persons, visually handicapped persons, and other physically disabled persons shall have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.”

Subdivision (e) of section 541 provides:

“(e) It is the policy of this state to encourage and enable blind persons, visually handicapped persons, and other physically disabled persons to participate fully in the social and economic life of the state and to engage in remunerative employment.”

Section 54.6 provides:

“As used in this part, ‘blind,’ ‘totally blind,’ ‘visually handicapped,’ and ‘partially blind’ means having central visual acuity not to exceed 20/200 in the better eye, with corrected lenses, as measured by the Snellen test, or visual acuity greater than 20/200, but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle not greater than 20 degrees.”

The foregoing test is also used in Vehicle Code section 22511.5 to determine which visually handicapped persons may use the specially marked parking spaces reserved for disabled persons.

The test which appears in these statutory definitions is explained in an article entitled “Blindness and Disorders of the Eye,” prepared in consultation with Leo J. Plummer, M.D. and published and distributed by the National Federation of the Blind. A portion of the second paragraph of the introduction to that article reads as follows:

“Only a relatively small percentage of blind people are totally blind, but one may be termed ‘legally’ blind for various purposes if (a) he has a central visual acuity of 20/200 or less in the better eye *with correcting glasses* (that is, he can see only at 20 feet what a person with normal 20/20 vision can see at 200 feet) or (b) has a field of vision which at its widest diameter subtends an angular distance no greater than 20 degrees. In other words, *one is legally blind if, even with correcting lenses, he retains 10% or less of normal vision.*” (Emphases added.)

Thus, the test is used to provide a practical, though necessarily arbitrary, means of distinguishing the blind from the sighted for the purposes of the statute in which it is used.

The equating of the legally blind with “other physically disabled persons” in section 54 of the same code, and in Vehicle Code section 22522.5, albeit for different purposes, reinforces our semantic analysis that in using the same words in defining assistive device in SB 1190 the Legislature had in mind only those visually handicapped persons who are

incapacitated by blindness.

We conclude that the Legislature intended by the use of the words “physically disabled person” in its definition of assistive devices in SB 1190 to include only those visually handicapped persons who are incapacitated by blindness. Blindness for purposes of SB 1190 should be determined by the same test as that set forth in section 54.6. It follows that prescription lenses and other ophthalmic goods are not assistive devices within the meaning of SB 1190 unless they are sold to those who are legally blind and in some manner assist the limited vision of those so disabled.
