Out and About in the Welfare State
- the Right to Transport in Everyday Life for People with Disabilities in Swedish, Danish and Norwegian Law

Andreas Pettersson
Out and About in the Welfare State
– the Right to Transport in Everyday Life for People with Disabilities in Swedish, Danish and Norwegian Law

Andreas Pettersson

Akademisk avhandling

som med vederbörligt tillstånd av Rektor vid Umeå universitet för avläggande av juris doktorsexamen framläggs till offentligt försvar i Hörsal C, Samhällsvetarhuset
Fredagen den 8 maj, kl. 14:00.
Avhandlingen kommer att försvaras på svenska.

Fakultetsopponent: Jur dr Richard Sahlin, Juridiska institutionen, Stockholms universitet, Sverige.
Abstract
The aim of this thesis is to identify how a social citizenship for people with disabilities is shaped by the normative structures in the Swedish, Danish and Norwegian law governing their right to transport in everyday life. The thesis deals with three types of transport provided by the public to private individuals: transport services, car allowances, and cash benefits for reimbursing transport costs for people with disabilities. For each provision, the focus of the study is directed by the following questions:
– Is there a rights/duties relationship between the public and the individual? Who is eligible for provision? How does public funding impact entitlement? Who is obliged to provide? What are the legal guarantees for entitlement?
Despite objectives within Nordic law and policy that people with disabilities should be compensated for their impairments, and allowed to lead independent and autonomous lives, the results from the thesis show that the various transport provisions do not fully realize this. The legal relations between the public and those with needs for transport in their everyday lives are characterized by control, scrutiny and questioning. In order to protect the public budgets from costs, the eligibility criteria in the law are so constructed as to ensure that only certain needs for transport, and only some impairments, can meet them. The national, regional and municipal governments, and the administrative courts, subject people with disabilities to intrusive inquiries regarding personal details and other circumstances in their lives, in order to be able to judge which needs for transport are to be considered legitimate and which are not.
The thesis shows that the individual rights to, especially, Swedish and Norwegian transport provisions are poorly protected against political decisions to cut funding. Local and regional self-governance is an interest that always competes with individual legal rights and make them weaker, irrespective of whether these rights can be appealed in administrative courts.
The conclusion in the thesis highlights how a social citizenship is shaped in the law governing the right to transport for people with disabilities, and that this social citizenship does not reinforce independence and individual autonomy for those who are dependent on the various provisions to meet their needs for transport in their everyday lives.

Keywords
Disability, transport, everyday life, disability law, social law, transport law, comparative law, welfare state, legal criteria
Out and About in the Welfare State
– the Right to Transport in Everyday Life for People with Disabilities in Swedish, Danish and Norwegian Law

Andreas Pettersson
– We like the cars. The cars that go booom.

L’timm
# Table of Contents

Table of Contents  i  
Abstract  vii  
Acknowledgements  viii  
PART I – Departure  1  
1 Introduction  2  
  1.1 Aim of the Thesis  5  
  1.2 Theory and Method  7  
  1.2.1 The Logic of Separation  7  
  1.2.2 Social Citizenship in Law  9  
  1.2.3 Redistribution and Recognition – a Theory Concerning Social Justice  11  
  1.2.4 Legal Cultures in the Nordic Welfare States  16  
  1.2.5 Framework Law and Social Rights in the Nordic Welfare States  20  
  1.2.6 Method and Sources for Parts II, III and IV  22  
2 Principles of Social Law and Disability Law in Nordic Scholarship  25  
  2.1 Important Principles in Nordic Social Law  27  
  2.2 Local Self-governance and Law in the Welfare States  31  
  2.2.1 Administrative Discretion and the Welfare State  33  
  2.2.2 National Supervision of Municipal Self-governance  34  
  2.2.3 Problems with Supervision of Municipalities – a Swedish Example  40  
  2.3 Disability Law and Policy in Sweden, Denmark and Norway  42  
  2.3.1 Disability Normalization – a Nordic Ideological Movement  43  
  2.3.2 Important Principles in Nordic Disability Law  48  
  2.3.3 Compensation and Mainstreaming from an Everyday Life Perspective  50  
3 Development of Law and Policy for People with Disabilities in Sweden, Denmark and Norway  52  
  3.1 Sweden – Universalism with Exceptions  52  
  3.2 Denmark – from Nationalization to Decentralization  59  
  3.3 Norway – from Differentiation to Unification  63  
  3.4 Transport Policy and Law for People with Disabilities in Sweden, Denmark and Norway  67  
PART II – Transport Services for People with Disabilities  81  
4 The Law Governing Transport Services in Sweden, Denmark and Norway  82  
  – Emergence and Development  82  
  4.1 Special Transport Services in Sweden – from Voluntary Operation to Municipal Obligation  82  
  4.2 National Special Transport Services in Sweden – from National Experiment to Decentralization  85  
  4.3 Individual Transport Services for People with Severe Mobility Impairments in Denmark – from Voluntary Operation to Legally Mandated Services  90
8.2 Car Allowance in Denmark – from National Tax Relief to Municipal Loans 149
8.2.1 Vehicles as Technical Assistive Devices and Durable Consumer Goods 158
8.3 Car Allowance in Norway – Means-tested Benefits 160

9 Car Allowance as a Social Right in Sweden 170
9.1 Car Allowance – a Rights/Duties Relation? 171
9.2 Who Is Eligible for Car Allowance? 172
9.2.1 Five Categories of Eligibility 176
9.3 Impact of Funding on the Right to Car Allowance 181
9.4 Who Is Obliged to Provide Car Allowance? 183
9.5 Legal Guarantees for Entitlement to Car Allowance 185

10 Car Allowance and Vehicles as Technical Assistive Devices and Durable Consumer Goods as Social Rights in Denmark 187
10.1 Car Allowance – a Rights/Duties Relation? 187
10.1.1 Car Purchase Allowance – a Rights/Duties Relation? 191
10.1.2 Exemption from Fees and Taxes – a Rights/Duties Relation? 194
10.2 Vehicles as Technical Assistive Devices and Durable Consumer Goods – a Rights/Duties Relation? 194
10.3 Who Is Eligible for Car Allowance? 196
10.3.1 Social Circumstances 198
10.3.2 Three Categories of Need for Transport in Everyday Life 201
10.3.3 Who Is Eligible for a Supplemental Loan? – Special Circumstances 204
10.3.4 Who Is Eligible for Benefits for Driving Instruction? 205
10.3.5 Who Is Eligible for Benefits for Necessary Adaptations to a Car? 207
10.4 Who Is Eligible for Vehicles as Technical Assistive Devices and Durable Consumer Goods? 210
10.5 Impact of Funding on the Right to Car Allowance 214
10.6 Impact of Funding on the Right to Vehicles as Technical Assistive Devices and Durable Consumer Goods 215
10.7 Who Is Obliged to Provide Car Allowance? 216
10.8 Who Is Obliged to Provide Vehicles as Technical Assistive Devices and Durable Consumer Goods? 217
10.9 Legal Guarantees for Entitlement to Car Allowance 218
10.10 Legal Guarantees for Entitlement to Technical Assistive Devices and Durable Consumer Goods 220

11 Car Allowance as a Social Right in Norway 221
11.1 Car Allowance – a Rights/Duties Relation? 222
11.2 Who Is Eligible for Car Allowance? 226
11.2.1 Who Is Eligible for Car Allowance to Increase Functional Ability in Working Life? 227
11.2.2 Who Is Eligible for Car Allowance to Increase Functional Ability in Everyday Life? 229
11.2.3 The Everyday Life Criterion 231
11.2.4 The Necessary and Appropriate Criteria 232
11.2.5 The Lasting Mobility Difficulties Criterion
11.2.6 An Individual Duty to Undergo Psychological Treatment
11.2.7 The Impossible or Unreasonable to Travel by General Public Transport Criterion
11.2.8 Four Categories of Need for Transport
11.2.9 The Real and Considerable Need for Transport Criterion
11.2.10 Extraordinary Working Life Eligibility – the Section 4 Exception
11.2.11 Who Is Eligible for Category 1 and Category 2 Car Purchase Allowance Respectively?
11.2.12 Who Is Eligible for Benefits for Adaptation and Equipment of a Motor Vehicle?
11.2.13 Who Is Eligible for Benefits for Driving Instruction?
11.3 Impact of Funding on the Right to Car Allowance
11.3.1 Impact of Funding on the Right to Renewal of Car Purchase Allowance
11.3.2 Debt Settlement of Car Purchase Allowance
11.4 Who Is Obliged to Provide Car Allowance?
11.5 Legal Guarantees for Entitlement to Car Allowance
PART IV – Cash Benefits for Transport for People with Disabilities
12 The Law Governing Cash Benefits for Transport in Denmark and Norway – Emergence and Development
12.1 Cash Benefits for Transport for People with Disabilities in Denmark – Municipal Reimbursements for Inaccessible General Public Transport
12.2 Basic Benefit for Transport for People with Disabilities in Norway – Compensation in Everyday Life
13 Cash Benefits for Transport and Escort for Travel as Social Rights in Denmark
13.1 Coverage of Necessary Additional Expenses for Transport – a Rights/Duties Relation?
13.2 Contribution for Travel by Individual Means of Transport – a Rights/Duties Relation?
13.3 Escort for Travel – a Rights/Duties Relation?
13.4 Who Is Eligible for Coverage of Necessary Additional Expenses in Everyday Life?
13.5 Who Is Eligible for Contribution for Travel by Individual Means of Transport?
13.6 Who Is Eligible for Escort for Travel?
13.7 Impact of Funding on the Right to Coverage of Necessary Additional Expenses for Transport
13.8 Impact of Funding on the Right to Contribution for Travel by Individual Means of Transport
13.9 Impact of Funding on the Right to Escort for Travel
13.10 Who Is Obliged to Provide Coverage of Necessary Additional Expenses for Transport? 280
13.11 Who Is Obliged to Provide Contribution for Travel by Individual Means of Transport? 280
13.12 Who Is Obliged to Provide Escort for Travel? 281
13.13 Legal Guarantees for Entitlement to Coverage of Necessary Additional Expenses for Transport 281
13.14 Legal Guarantees for Entitlement to Contribution for Travel by Individual Means of Transport 282
13.15 Legal Guarantees for Entitlement to Escort for Travel 282

14 Basic Benefit for Transport as a Social Right in Norway 283
14.1 Basic Benefit for Transport – a Rights/Duties Relation? 284
14.2 Who Is Eligible for Basic Benefit for Transport? 284
14.3 Impact of Funding on the Right to Basic Benefit for Transport 290
14.4 Who Is Obliged to Provide Basic Benefit for Transport? 290
14.5 Legal Guarantees for Entitlement to Basic Benefit for Transport 291

PART V – Arrival 293
15 Out and About in the Welfare State – Conclusions and Discussion 294
15.1 The Normative Structures in Swedish, Danish and Norwegian Law on the Right to Transport in Everyday Life for People with Disabilities 296
15.1.1 A Rights/Duties Relation? 297
15.1.2 Who Is Eligible? 298
15.1.3 Impact of Funding 301
15.1.4 Who Is Obliged to Provide? 302
15.1.5 Legal Guarantees for Entitlements 303
15.2 A Social Citizenship in the Law Governing the Right to Transport in Everyday Life for People with Disabilities 304
15.2.1 The Ideal, Working, Disabled Citizen 304
15.2.2 The Ideal Elderly Citizen with Age-related Impairments 306
15.2.3 The Ideal Citizen with Major Impairments 310
15.3 Citizens or Customers? The Impact of Welfare State Legal Cultures on the Law Governing Special Public Transport Services 311
15.4 The Trade-off between Collective Legitimacy and Individual Autonomy – the General Relativity Theory of Framework Law 313
15.4.1 Future Research – the Special Relativity Theory of Framework Law 316

References 317
Official documents 317
Sweden 317
Denmark 320
Norway 322
European Union 326
Case Law 326
Sweden 326
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denmark</td>
<td>328</td>
</tr>
<tr>
<td>Norway</td>
<td>331</td>
</tr>
<tr>
<td>Literature</td>
<td>337</td>
</tr>
<tr>
<td>Internet based references</td>
<td>360</td>
</tr>
</tbody>
</table>
Abstract

The aim of this thesis is to identify how a social citizenship for people with disabilities is shaped by the normative structures in the Swedish, Danish and Norwegian law governing their right to transport in everyday life. The thesis deals with three types of transport provided by the public to private individuals: transport services, car allowances, and cash benefits for reimbursing transport costs for people with disabilities. For each provision, the focus of the study is directed by the following questions:

– Is there a rights/duties relationship between the public and the individual? Who is eligible for provision? How does public funding impact entitlement? Who is obliged to provide? What are the legal guarantees for entitlement?

Despite objectives within Nordic law and policy that people with disabilities should be compensated for their impairments, and allowed to lead independent and autonomous lives, the results from the thesis show that the various transport provisions do not fully realize this. The legal relations between the public and those with needs for transport in their everyday lives are characterized by control, scrutiny and questioning. In order to protect the public budgets from costs, the eligibility criteria in the law are so constructed as to ensure that only certain needs for transport, and only some impairments, can meet them. The national, regional and municipal governments, and the administrative courts, subject people with disabilities to intrusive inquiries regarding personal details and other circumstances in their lives, in order to be able to judge which needs for transport are to be considered legitimate and which are not.

The thesis shows that the individual rights to, especially, Swedish and Norwegian transport provisions are poorly protected against political decisions to cut funding. Local and regional self-governance is an interest that always competes with individual legal rights and make them weaker, irrespective of whether these rights can be appealed in administrative courts.

The conclusion in the thesis highlights how a social citizenship is shaped in the law governing the right to transport for people with disabilities, and that this social citizenship does not reinforce independence and individual autonomy for those who are dependent on the various provisions to meet their needs for transport in their everyday lives.
Acknowledgements

All my life I have had the good fortune to be surrounded by brilliant women. Never was this truer than during the years when I completed my doctoral studies at Umeå Forum for Studies on Law and Society at Umeå University.

Writing this thesis has not been an easy task, and I have many women, and one man, to thank for their considerable efforts in helping me. At different times I have expressed gratitude, and at other times I have been less than graceful, despite their continuous support and affection. It is, therefore, only fitting and proper that these acknowledgments are entirely dedicated to giving thanks. Words are, however, very small when you try to sum up years of work, experiences and emotions. I therefore hope that all of you will discern a deeper and fuller meaning and gratitude than can be conveyed in these letters alone.

My supervisor, Åsa Gunnarsson, from the bottom of my heart: thank you. I literally could not have done this without you. There are so many ways in which you are the best at what you do, the best of leaders, the best of researchers, and the best of friends, and I could not list them all even if I tried.

My assistant supervisor, Åsa Yttergren, a truly heartfelt: thank you. As you have so aptly concluded, this was not a linear process. Without your constant encouragement and support, in good times and in bad, I could not have done this.

Lena Wennberg and Monica Burman have led Umeå Forum for Studies on Law and Society to its success as a research environment with collaborative networks and important contacts in many countries. This remarkable achievement has impacted greatly on the post-graduate education for us doctoral students. In my, not-so-humble, view this has been the finest research education in law and society that I could ever have imagined obtaining. You have led us, and continue to lead, successfully and with great integrity. Thank you.

Britt Granberg, Elin Jonsson and Johanna Jers are my nearest neighbors in our corridor. You are delightful to work with and all of you have brightened more days than you can possibly know. Thank you.

Ann-Christine Peterson Hjelm and Maria Forsman are my generous and professional senior colleagues, and also my comrades-in-arms in the task of teaching social and welfare law to multitudes of social work students. Your dedication to the work and to the students is an inspiration. Thank you.
Jenny Westerstrand is yet another of these brilliant women I have had to good fortune to meet and work with. Your courage as a researcher, and in the public debate, is a source of constant pride and inspiration. Thank you.

Anu Pylkkänen gave of her precious time to help me improve the manuscript. Then she left us, much too early, to sail for the white shores, and beyond, a far green country under a swift sunrise. Thank you.

Karin Ågren has ever reminded us that the university is a professional workplace. By living up to your own high standards you set a remarkable example for the rest of us. Thank you.

Margaret Davies, Flinders Law School, Flinders University, Adelaide read an early draft of the first chapters and gave valuable comments on the method and theory. In this thesis, I think I am asking the law question. Thank you.

Thomas Erhag and Sara Stendahl, Department of Law at Gothenburg University, have read the manuscript at different stages, and made valuable and important comments. Thank you.

Wanna Svedberg, also of the Department of Law at Gothenburg University, comprises the other half of the Feminist Transport Law Association which will do great things in the future. Your friendship and your constant encouragement are more appreciated than you might know. Thank you.

Pat Shrimpton has read the entire manuscript and her language checking has helped me to improve the text considerably. Thank you.

Emil Heijne’s Foundation for Legal Research has provided a generous grant to cover the printing costs. Thank you.

Sofia Present, my dearest sister, took a picture in New York and let me put it on the cover of this book. For your always affectionate support and encouragement, thank you.

Susanna, my colleague, my friend, my love and my light, thank you for everything.

Umeå, Easter 2015

Andreas Pettersson
PART I – Departure
– For my part, I travel not to go anywhere, but to go. I travel for travel’s sake. The great affair is to move.

R. L. Stevenson

1 Introduction

Leaving home on an everyday basis, and going out and about in the society, without much effort and whenever we want, is something which many of us might take for granted. But many people with disabilities have only limited possibilities to go out and about because the society is inaccessible. In Sweden, Denmark and Norway various transport provisions are available through the welfare state to solve this problem. In these three countries the individual’s right to transport provisions is regulated by law. This is a thesis about disability law governing the right of people with disabilities to transport in Sweden, Denmark and Norway. It is based on an understanding that transport is important for both individual autonomy and equality of participation in everyday life, and thereby for the achievement of social justice for people with disabilities.

Equality, participation, social justice and disability are all to be understood as relational and relative notions. Equality is important in current disability law, and is a central notion in such law globally. Equality for people with disabilities is usually understood as something to be achieved relative to something else. This something else seems to be represented by others, the non-disabled people, who are viewed as the norm. People with disabilities are not considered to be the norm, even regarding their own needs in their own everyday lives.

One area where law and policy strive to achieve equality for people with disabilities is access to transport. Transport matters in the everyday life of virtually anybody in a modern society. Transportation is a means to making many other things possible, such as work, education, shopping, socializing, sports and a host of other human activities. For people with disabilities, access to transport has been identified as an important area for increased

---

1 See for example the UN Convention on the Rights of Persons with Disabilities. See also for example Mjöll Arnaardóttir 2009, Ventegodt Liisberg 2011, p 159 ff and Rioux & Riddle 2011.
2 See for example Nordgren 2009.
3 Svedberg 2013, p 24 ff.
participation, and for making society accessible. The Nordic Council of Ministers has pointed out transport for people with disabilities as a strategic issue for the Nordic countries. In many developed countries transportation is considered a major barrier to equal and autonomous participation for the disabled, in both remote and urbanized areas. We know that people with disabilities travel less frequently than the general population, and also experience more difficulties and frustrations when getting around in their everyday lives.

The Swedish, Danish and Norwegian national governments have all stressed the importance of their international legal duties, and their commitment to international human rights instruments. Sweden, Denmark and Norway are parties to the UN Convention on the Rights of Persons with Disabilities. Article 20 of the Convention specifically states that the states shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice. This makes individual autonomy a central objective in international law governing the right to transport in everyday life for people with disabilities.

Even with benign law and policies, the disabled are often excluded from mainstream society, and not viewed as real citizens. The social problem examined in this thesis is how normative structures in law, in Sweden, Denmark and Norway, on the right to transport, shape a social citizenship for people with disabilities. In a narrower sense, the problem dealt with here is whether people with disabilities, in these welfare states, are able to go out and about autonomously. This gives rise to interesting questions about inclusion and exclusion, how disability and normality are constructed by law, and how social justice is achieved. Answering these questions reveals how a social citizenship is constituted for people with disabilities.

The Swedish, Danish and Norwegian welfare states are the context for the law examined in this thesis. The Nordic welfare states are often described in social

---

5 Nordens Välfärdscenter 2012.
6 Malhotra & Rowe 2014, p 125 ff.
7 See for example Trafikanalys 2013, p 99 f.
8 See for example Handisam 2013, p 62 ff.
science as being different from other countries and regions.\textsuperscript{11} When welfare researchers referred to a common Nordic model of public services, they often stressed the similarities between the countries, regardless of minor differences in policy.\textsuperscript{12} The underlying principle is described as that of universalism; a uniform standard of services exists, and all citizens have access to the services they require within the same system. Local self-governance is a cornerstone of the model, and local authorities are commonly tasked with planning and funding the provision of social services.\textsuperscript{13} The model has also been characterized by generous benefit levels, funding of the welfare state provisions through taxation, egalitarian redistribution and a major commitment to full employment.\textsuperscript{14} In the Nordic welfare states, as compared to other countries, people are perceived to have greater social protection based on citizenship and residence. Social rights and social security are described as independent of employment and contributions to a larger extent. The welfare state, backed by a lightly regulated capitalist market economy, a parliamentary democracy and a dynamic civil society, has been described as the pillar of Nordic society.\textsuperscript{15}

The legal context of the Swedish, Danish and Norwegian welfare states, through which the states aim to realize egalitarian ambitions, situates this thesis in social law. Another legal context, where perhaps human rights or anti-discrimination law would be the only legal instruments available for securing transport rights for people with disabilities, would have produced a very different thesis. However, as it is set in the context of the Nordic countries, the thesis is situated in the law of the welfare states, where social rights for the disabled constitute an important part of the ideological tradition.

The thesis draws on earlier research into social law in the Nordic countries, both for the method and for the theoretical discussion on social rights. At the Nordic Seminar of Social Law\textsuperscript{16} in 2009 the doyen of social law in the Nordic countries, Asbjørn Kjønstad, expressed a desire for a more systematizing approach in legal research; that scholars in the future would focus more on finding the underlying principles of social law, and developing concepts essential in deep structural legal analyses.\textsuperscript{17} This thesis is a serious attempt to meet those desires.

\textsuperscript{11} See for example Christiansen, Petersen, Edling & Haave (eds) 2006.
\textsuperscript{12} Anttonen and Sipilä 1996, p 96.
\textsuperscript{13} See for example Blomqvist & Rothstein 2000.
\textsuperscript{14} See for example Sainsbury 1999, p 75.
\textsuperscript{15} Kuhnle 2006, p 20.
\textsuperscript{16} The Nordic Seminar of Social Law in March 2009 at the Department of Law at Gothenburg University.
\textsuperscript{17} Kjønstad 2010.
1.1 Aim of the Thesis

The aim of this thesis is to identify how a social citizenship, for people with disabilities, is shaped by the normative structures in Swedish, Danish and Norwegian law governing their right to transport in everyday life.

Social citizenship is used in this thesis as a means of showing how material conditions, as shaped by the law, have a huge impact on the social rights of people with disabilities, not made obvious by the formal requirements or normative ideological statements. In earlier research, social citizenship has been used to demonstrate how the distributive principles in welfare states are based on inclusion in, and exclusion from, rights and obligations.18

The term normative structures is used to capture all the normative content which is significant for the right to transport in everyday life for people with disabilities. This content not only comprises formal law, but also includes principles of social law, welfare state ideology, and administrative procedures. In previous research, normative structures have been used in a similar way to take in policy objectives, and conceptions of societal patterns, together with legal principles and legal solutions.19

The everyday life perspective is used throughout the thesis, based on the view that, when provisions regulated by law matter to groups of people on a daily basis, they are important for the entire structure of society and are, therefore, interesting topics for legal research.20 Everyday life is also central in this thesis because the perspective highlights certain ideological values which are critical in relation to disability law. Individual autonomy and equal participation are examples of such values.21

A rich literature in disability research and disability law is available, concerning different classifications and definitions of disability and people with disabilities.22 The group of people focused on in this thesis, however, are not defined theoretically, but by law, as those who may be entitled to the various transport provisions. This means that certain impairments or certain medical diagnoses will be more important for the thesis than others. For example, mobility impairments occur more frequently than, say, diabetes or hearing impairments. “People with disabilities” will be used as a generic

18 See for example Sainsbury 1999 and Gunnarsson 2003.
20 Svedberg 2013, p 59.
21 See for example Pettersson 2013.
phrase, but as it is given its content by the law, specific groups of people and specific impairments will come more into focus, depending on the eligibility criteria and entitlements concerning each provision.

The aim situates the thesis in a critical theoretical position. One underlying idea here is that the formal law and its legal definitions are not sufficient for an understanding of the full social and material content of the law. A social citizenship shaped by the normative structures also recognizes the social and political power of law, and reveals that the material consequences of the law are not neutral, but are ordered and structured according to understandings of political legitimacy and social justice. In this sense, a thesis in the academic field of law cannot be neutral because the law cannot be neutral, and a thesis must necessarily take a position. The position taken in this thesis is that there is no specific ideological loyalty to any criteria, statement or objective within the normative structures. Rather, the thesis is aligned with the ideological values highlighted by the everyday life perspective for people with disabilities. The critical position taken in this thesis, therefore, means that the law will be understood from the viewpoint that individual autonomy and equal participation for people with disabilities are significant values, as well as desirable and necessary components of social justice.

This critical aim is met in three steps; first, the theoretical framework is laid out, secondly, the normative structures are identified and analyzed, and thirdly, the social citizenship shaped by the normative structures is outlined and discussed. The first step is covered in Part I of the thesis, so that the general theoretical framework is presented in this Chapter. In Chapter 2 an analysis of important legal principles, as they have been discussed in Nordic social legal research, is presented, and in Chapter 3 the disability law and welfare state ideologies in the three countries are analyzed. The second step is covered in Parts II, III and IV of the thesis, which present empirical analyses of the law governing the transport provisions. Finally, the normative structures and the social citizenship which they shape, are discussed in Part V of the thesis.

The subject for the thesis is the transport provision which is available with the individual entitlement, which is free for autonomous use by the entitled person to go out and about in everyday life. Transport provisions which are beyond this scope, for example school transport, medical transport to and from hospitals, and suchlike, are not studied here. The law governing general public transport is also not part of this thesis. Nevertheless, general public

---

24 See for example Wennberg 2008, p 27 and Svedberg 2013, p 51.
transport is important for the thesis, because law and policy in the three countries often use general public transport as a norm, and the ability to travel by this means is often used as a way of defining a non-disabled person.

Comparing law between different countries is both entertaining and meaningful, and it is interesting to read the results. In the field of comparative legal theory much is written about why comparisons can be difficult, or cannot always produce meaningful results. Yet interesting comparative legal research is being done on social and disability law in the Nordic countries. This thesis compares the three countries of Sweden, Denmark and Norway which can be viewed as belonging to a legal family, or sharing a legal culture. This comparison will hopefully produce interesting knowledge on social and disability law in the Nordic welfare model. The comparison will also make possible a broad and contextual understanding of the social citizenship of people with disabilities, as it is shaped in the Nordic legal culture.

1.2 Theory and Method

The critical aim of the thesis entails the interconnection of theory and method. The theoretical aspects and their methodological consequences draw their inspiration from a wide range of legal scholarship, philosophy, social studies and disability research. This chapter presents a discussion of theoretical aspects of the research problem followed by an outline of the method and structure of the rest of the thesis.

1.2.1 The Logic of Separation

The logic of separation exists throughout the entire sphere of western culture. Society has many criteria for what is considered rational and reasonable. These beliefs make it necessary for boundaries to be drawn up, in order to separate what is inside and what is outside. According to Eva-Maria Svensson, this separation is an important process not only for deciding what is rational and reasonable, but also to normatively sustain the legitimacy of the criteria.

---

27 See for example Derlén 2007, p 57.
28 See for example Petersen 2013.
This is key in disability law, where the categorization of being sufficiently disabled is often the main qualification for inclusion and entitlements under the law.\textsuperscript{30}

Humans are prone to theoretically organizing the world in categories. A common form of categorization is the dichotomy: a pair of ideas which can be understood only in relation to one another, such as big/small or fat/thin etc. Another common form of categorization is the rigid or natural category, which can only have one given value. Categorization is an almost unavoidable part of human thought. We cannot liberate our thought from the categories as we need them to handle and organize our existence, and for this reason we need to be aware of the problems of categorization. Even if it is impossible not to make distinctions, reflection and argumentation must take place about the way the distinctions are being made. Any situation where certain categories become untouchable should be avoided. Rather, we should be prepared to understand all categories as temporary and preliminary.\textsuperscript{31}

It is neither possible nor particularly interesting to define the limits of disability, or the qualifications for human impairments. Yet, bodily categorizations relating to disability often appear as dichotomies, such as blind/seeing, deaf/hearing, disabled/non-disabled etc. Johans Tveit Sandvin notes that such functionally defined dichotomies also, in a way, constitute categories of superiority and inferiority so that the one is defined through the negation of the other; blindness is to not be able to see, deafness is to not be able to hear etc.\textsuperscript{32} All aspects of disability are thus defined from ideals which are not fulfilled, or from demands which are not being met. As one category is clearly superior to the other, disability is often understood and interpreted as deficiency and inferiority.\textsuperscript{33} This impacts on social attitudes and on law and social policy.

A critique of the logic of separation often implies a critique of the grounds upon which the distinctions are established, but can also signify a critique of the absence of any problematizing of the separation.\textsuperscript{34} Legal categorization is as unavoidable as any other. In welfare states, law and policy demand the drawing of boundaries and the creation of categories, which are often viewed as necessary in order to create material equality. For example, when Nordic

\textsuperscript{30} Bruce 2014.
\textsuperscript{31} Svensson 1997, p 53 ff.
\textsuperscript{32} Sandvin 2008, p 67.
\textsuperscript{33} Bruce 2014, p 44.
\textsuperscript{34} Svensson 1997, p 55.
disability normalization\textsuperscript{35} was articulated in the disability policy of the 1960s, the category “normal” was frequently used.\textsuperscript{36} This category represented something else, a variation or difference. A “normal” life was understood to be different from the everyday life of people with intellectual disabilities who lived in residential institutions. The category “normal” became the general norm for non-disabled people living outside institutions. In this way other people, but not the people with intellectual disabilities, became the official representatives of normality.

In disability law, the logic of separation is often powerful and focused on defining disability through legal criteria. For example, Maria Ventegodt Liisberg has written about various definitions of disability in Danish, Swedish and EU law.\textsuperscript{37} Richard Sahlin and Annika Jyrwall Åkerberg have both written about the definitions of disability in Swedish anti-discrimination law.\textsuperscript{38} Sahlin has also written about the legal criteria for disability in Swedish social security law.\textsuperscript{39} Anna Bruce has written comprehensively on legal definitions of impairments and disability in international law.\textsuperscript{40} Aslak Syse and Therése Fridström Montoya have both written about legal definitions of intellectual and cognitive impairments in Norwegian and Swedish law respectively.\textsuperscript{41}

The logic of separation is ever present in the law studied in this thesis. One of the most obvious uses of the logic of separation is in constructing the eligibility criteria for the various transport provisions, where the entire function of the law is to separate those who may be entitled from those who may not. This means that disability is constructed by law every time someone claims an entitlement, and this in turn makes it particularly interesting to study eligibility criteria.

\subsection*{1.2.2 Social Citizenship in Law}

A traditional legal understanding of citizenship is often formal and constitutional, and based on belonging to a nation state. Social citizenship

\textsuperscript{35} Note that Nordic disability normalization was a normative ideal and policy objective, and not in any way connected with a Foucauldian critique of normativity. See Chapter 2 this volume, or Askheim 2003 or Bengtsson & Kilskou Kristensen 2006 for a discussion of Nordic disability normalization.

\textsuperscript{36} See for example Nirje (ed) 2003, p 54 f.

\textsuperscript{37} Ventegodt Liisberg 2011.

\textsuperscript{38} Sahlin 2004 and Jyrwall Åkerberg 2015, p 25 ff.

\textsuperscript{39} Sahlin 2012, p 86 ff.

\textsuperscript{40} Bruce 2014.

\textsuperscript{41} Syse 1996 and Fridström Montoya 2015, p 68 ff.
originated not in law, but in social studies where it was understood to be a more substantive citizenship composed of civil, political and social rights. Diane Sainsbury noted that entitlements to social rights based on residence are central to an understanding of a substantive citizenship. Ruth Lister has underscored the importance of social citizenship for both women and people with disabilities for their inclusion and exclusion from rights and opportunities in the welfare states. Building on such observations, Åsa Gunnarsson has used social citizenship in legal research into the distributive principles of the Swedish welfare state, and Lena Wennberg into those of all the Nordic welfare states.

The Nordic welfare states are often described as being universalistic and based on the assumption that all citizens are included in the social infrastructure. However, the distribution and funding of social justice in welfare states are influenced by perceptions of what constitute normal and ideal social requirements for citizenship. Ideas of ideal citizenship form the basis for the construction of social rights and social obligations in law. Which people, and what social circumstances can be included in the social citizenship are determined in a qualification process based on these rights and obligations. In this way the law participates in designing a social infrastructure and deciding what social conditions are to be deemed normal in the social citizenship. The law articulates a standard for normality. This process of shaping a social citizenship in law has an impact, both theoretical and methodological, on this thesis. Studying how the entitlements to transport provisions contribute to individual autonomy and equal participation, reveals the scope of a social citizenship shaped in law.

A social citizenship in law also highlights the methodological necessity of investigating both eligibility criteria and benefit levels. In this thesis, the eligibility criteria, which need to be met by an individual in order to qualify for entitlement for benefits or services, are instrumental in constructing disability and, thus, in deciding about inclusion in, and exclusion from, the transport provisions. Benefit levels are studied both as a quantitative measure, for example the size of a cash benefit or the extent of services, but benefit levels

---

48 Sainsbury 1996 and 1999, Gunnarsson 2007a, p 196. Other scholars have also identified the importance of studying eligibility criteria and benefit levels together, without calling it a social citizenship, see for example Brækhus 1996, Vahlne Westerhäll 2002 and Ventegodt Liisberg 2011.
also include obligations and duties for the individual, which may impact on individual autonomy and the possibilities for equal participation.

1.2.3 Redistribution and Recognition – a Theory Concerning Social Justice

Social justice lies at the very center of the concept of equality, and is not only a question of the distribution of social goods and material wealth in society, but also of the possibilities for individuals and social groups to articulate their own unique experiences and perspectives. The Nordic welfare states have been criticized for generalizing the identities of dominant groups in society and thereby constructing such perspectives and experiences as normality.\textsuperscript{49} Historically, institutional factors and conditions, including representative democracy and an articulate and well-organized labor movement, communicated and legitimized social justice.\textsuperscript{50}

Viewed from a disability perspective, a prerequisite for social justice is equal participation in society.\textsuperscript{51} Social justice is not present when certain individuals or groups are excluded from participation and social interaction in society on equal terms with everyone else. Nancy Fraser discusses in depth the nature of social justice, and she uses the terms redistribution and recognition to illustrate different aspects of social justice. Redistribution originates from a liberal tradition, and appears prominently in ideas that try to synthesize the traditional liberal emphasis on individual liberties with the social democratic emphasis on equality. Redistribution signifies an understanding of social justice that justifies and relies on socio-economic redistribution in society. Recognition, on the other hand, originates in Hegelian philosophy, and recognition focuses on an ideal reciprocal relation between subjects. Recognition is based on subjectivity, where the individual becomes a subject by recognizing other subjects and, in turn, by being recognized by other subjects.\textsuperscript{52}

Therése Fridström Montoya describes the conflation in disability law between the negative freedom from dependency and unnecessary interference, and the positive freedom to make autonomous and independent choices.\textsuperscript{53} This

\textsuperscript{49} Hugemark and Roman 2007, p 27 f.
\textsuperscript{50} Gunnarsson and Svensson 2009, p 153 f.
\textsuperscript{51} Lister 2007.
\textsuperscript{52} Fraser 2003, p 10.
\textsuperscript{53} Fridström Montoya, p 236.
illustrates how the welfare state is instrumental, in the Nordic context, in making material resources available for people with disabilities through redistribution, but also in recognizing the importance of their emancipatory autonomy.

Redistribution focuses on socio-economic injustices, for example forms of economic marginalization such as being confined to underpaid work or being denied participation on the labor market altogether, or a normal standard of living. Recognition focuses instead on cultural injustices, such as cultural domination, rendered invisible through the normative practices of the culture, and disrespect, as in being routinely maligned or disparaged in stereotypical ways in cultural representation, and in interactions in everyday life. As the natures of injustices differ, these two understandings propose entirely different remedies. The redistribution remedy is the economic restructuring of society. The recognition remedy is cultural or symbolic change. The politics of redistribution is often equated with class politics, while the politics of recognition is often understood as struggles over gender, sexuality, ethnicity etc, and is sometimes even associated with identity politics. Recognition does not, however, have to imply identity politics, or to rely on someone’s inner feelings of belonging or identity. According to Fraser, the identity model of recognition is both theoretically and politically problematic as it easily reproduces group identities that can be extremely excluding, and also because an entirely identity-based recognition easily tends to replace, rather than reinforce, redistribution.

Lack of recognition should not be understood as a cultural or symbolic bias or a perceived slight, but rather as a status in society. It is important that the understanding of recognition is not limited to a feel-good issue for the individual, or a matter of pure self-realization. When institutionalized patterns of cultural and symbolic value construct some people as inferior, excluded, or just invisible, there is a lack of full partnership in social interaction and hence a state of misrecognition, or status subordination, exists. The status model of recognition focuses only on such misrecognition, which is anchored in social structures that systematically deny people equal opportunities to participate in society. A struggle for recognition is therefore a struggle to change institutionalized cultural patterns that subordinate groups of people in such a way as to deny them parity of participation in social life. The importance of the status model of recognition lies in that misrecognition proper occurs, not in a purely cultural realm of symbolic

54 Fraser 2003, p 11 ff.
55 Fraser 2000, p 110.
56 Fraser 2003.
patterns of stigmatizing or demeaning evaluation, but rather in cultural value patterns that are institutionally anchored and systematically subordinating.\(^57\)

The significance of misrecognition, understood as a status problem of people being denied the status of full partners in social interaction due to institutionalized and systematical patterns, cannot be overestimated. From an identity-based point of view recognition and redistribution might be construed as mutually exclusive; from a status point of view, however, they become integrated. Fraser believes that they seem to present us with an either/or choice:

“Should we opt for a politics of redistribution that aims to abolish class differentials? Or should we embrace a politics of recognition that seeks to celebrate or deconstruct group differences? Apparently we cannot support both. This, however, is a false antithesis.”\(^58\)

While certain injustices can probably be firmly placed wholly within one of the paradigms, or at either of the extreme ends of the spectrum, most social divisions and injustices are more complex. They combine features of both maldistribution and misrecognition; Fraser calls such divisions two-dimensional, rooted both in the economic structure and in the status order of society. Two-dimensionally subordinated groups suffer both maldistribution and misrecognition in forms where neither of these injustices is an indirect effect of the other. Neither a politics of redistribution alone nor recognition alone will then suffice. Two-dimensionally subordinated groups need both.\(^59\)

Virtually all cases of subordination can be construed as two-dimensional, as they implicate both maldistribution and misrecognition in patterns where each of the injustices and inequities has some independent weight, regardless of its roots. The precise proportion and implications of economic disadvantage and status subordination respectively must be determined empirically on a case-by-case basis. Yet, overcoming injustices and inequities in practical terms requires both redistribution and status recognition. The need for such a dual approach only increases as these single instances of social injustice are viewed together. In reality the subordinations of gender, disability, ethnicity, sexuality, class etc are not neatly cordoned off from one another, but intersect, affecting economic interests and cultural patterns. No single individual person is a member of only one such collectivity. Moreover, any individual or group subordinated from one perspective might very well be dominant from another.

\(^{57}\) Zurn 2003, p 522.

\(^{58}\) Fraser 2003, p 16.

\(^{59}\) Fraser 2003, p 19.
perspective. To remedy social injustices it is therefore necessary to integrate redistribution and recognition.\(^{60}\)

Tom Shakespeare has noted how people with disabilities suffer both socio-economic injustices, such as marginalization and deprivation, and cultural injustices, such as non-recognition and disrespect.\(^{61}\) With social justice viewed as full partnership in social interaction it is obvious that full participation in society for people with disabilities takes on a special meaning. Nancy Fraser uses the term participatory parity as the standard against which the legitimacy of norms can be measured.\(^{62}\) Without full parity of participation there can be no full partnership in social interaction and hence no recognition by others. Social justice in the welfare state thus requires not only good redistributive efforts, but also parity of participation for people with disabilities.

One way to gauge parity of participation in society for people with disabilities is the extent to which they can take part in various activities. Participation on the labor market, for example, measures socio-economic stratification, and disability is an important factor of such stratification. People with disabilities fare significantly worse on the labor market than people without disabilities. Participation in the work force is substantially lower among people with impairments that affect their ability to work. In Norway, for example, about 75\% of the adult population is employed in paid work. However, only 44\% of adults with disabilities that affect their ability to work are employed and half of these work part-time. As a result people with disabilities on average earn only about 75\% as much as the population as a whole.\(^{63}\) Similar statistics in Sweden present similar numbers: while 79\% of the adult population without disabilities is employed in paid work this is true for only about 55\% of people with impairments that affect their ability to work.\(^{64}\) Danish research also shows that this low participation in the work force exists independently of sex, age or education and is thus a direct effect of disability. People with disabilities, however, display no more negative attitudes to work, than people without disabilities. Rather, a huge percentage of people with disabilities who are unemployed want to work. The younger the unemployed individual, the stronger the desire for employment and men want employment slightly more than women.\(^{65}\) A Danish study also shows that the greater the individual impairment, the lower the annual income.\(^{66}\)

\(^{60}\) Fraser 2003, p 25 f.  
\(^{61}\) Shakespeare 2005, p 164.  
\(^{62}\) Fraser 2008.  
\(^{63}\) Sosial- og helsedirektoratet 2006, p 16 and p 74.  
\(^{64}\) Skr 2005/06:110, p 31.  
\(^{65}\) Bengtsson 1997, p 61 ff.  
\(^{66}\) Bengtsson 1997, p 83 ff.
In culture and the mass media people with disabilities are often stereotyped, and cast either as victims and objects of pity, or heroes for overcoming their impairment. Disability discrimination is evident in the culture, both in the general lack of representation of people with disabilities in the media, and in the way people with disabilities are presented. The logic of separation is clearly evident in the mass media, where people with disabilities are subjected to “othering”, and are cast as deviating from normality, which inevitably affects their social position in society. From a cultural point of view, the welfare states take part both in shaping the normalities and constructing people with disabilities as different, and in the emancipatory efforts to aid and empower people with disabilities.

People with disabilities thus suffer both socioeconomic maldistribution and cultural misrecognition. On a structural level, people with disabilities can be viewed as a bivalent collective, meaning that they are differentiated by both the political and economic structures as well as by the cultural and value-based structures in the Nordic model. This, of course, poses a significant challenge to the Nordic welfare states, which are largely founded on social justice as redistribution. While the welfare states are very good at redistribution, strategies for meeting the challenge of misrecognition facing people with disabilities are not equally well developed. For this thesis, transport provision for people with disabilities fits well into an understanding of social justice as redistribution. Such provisions are publicly funded and aim at compensating people who are at a disadvantage. The values of individual autonomy and parity of participation do not fit as easily into a redistributive understanding of social justice. In a social citizenship shaped by law, these values belong in the symbolic and cultural dimensions of citizenship. The redistribution/recognition dilemma can, therefore, be understood in this thesis as the tension between redistributive social justice in the welfare state, and recognition as social justice through individual autonomy and participatory parity.

67 Nordens Välfärdscenter 2011.
68 Grip 2009.
69 Ljuslinder 2002, p 162.
70 Lindqvist & Sauer (eds) 2007, p 27.
71 Pettersson 2012.
73 Pettersson 2013.
1.2.4 Legal Cultures in the Nordic Welfare States

In international comparative socio-legal studies, understandings of legal cultures are often linked to an emphasis on empirical legal research.\(^{74}\) Legal cultures are understood to run deeper in society than mere formal law.\(^{75}\) Empirical research in law is therefore necessary if one wants to study legal cultures.

Within the field of comparative law and empirical legal research, legal cultures have been given different meanings, but the term is often used to capture similarities in mentalities, or attitudes, or ways of thinking about law, or approaching law, which run deeper in society than can be captured or described by a mere positivist understanding of law.\(^{76}\) Margaret Davies has noted that:

> “insides and outsides formed by the interweaving of culture and law, are not only a theoretical matter relating to the nature of a person’s identity, but have serious practical consequences”.\(^{77}\)

One use of legal culture, of particular interest for this thesis, is to grasp the political significance of the moral legitimacy created by the traits or patterns which can be summed up as legal culture.\(^{78}\)

The search for deep structures and normative patterns in the law of the Nordic welfare states has a long tradition among legal scholars.\(^{79}\) In a Nordic tradition, legal cultures have been understood as somewhat temporary and fluctuating, as sets of values and ideologies which become important or dominant for a time and then gradually give way to other legal cultures.\(^{80}\) Kaarlo Touri has described legal culture as a level of law with some consistency over time, where change occurs more slowly than on the surface level of law, and yet is more susceptible to change than the deep structures.\(^{81}\) This is a way of thinking about legal cultures which resonates well with Nordic scholarship in social law. In this thesis, at least three legal cultures which influence social rights for people with disabilities, and their inclusion in, and exclusion from,

---

\(^{74}\) See for example Riles 2008, p 798.
\(^{75}\) See for example Cotterell 2008.
\(^{76}\) See for example Nelken 2012.
\(^{77}\) Davies 2008, p 18.
\(^{78}\) Cotterell 2008, p 725.
\(^{80}\) See for example Petersen 2011.
\(^{81}\) Tuori 2002, p 150.
a social citizenship in the Nordic welfare states, are discernable. Anneli Anttonen has identified the social insurance state and the social service state. A third legal culture is introduced in this thesis, the law, ideology and rationality of the EU state.

The social insurance state refers to the welfare state structures that guarantee basic economic security for the citizens. It came into existence to strengthen the status of citizens as economic providers through waged labor. The concept of the social service state refers to welfare state structures which provide a more maternalistic and caring social policy. Legal scholarship in social law in the Nordic countries has often been related, one way or another, to the complexities created by these two legal cultures. The law of the social insurance state, for example, shares certain characteristics with the administrative Rechtsstaat, while the law of the social service state is more concerned with local self-governance and administrative discretion.

These two legal cultures evolved during different periods of time. The original aim of the social service state was to strengthen women as mothers and caregivers within the family. After the Second World War the social service state gradually aimed at supporting women not only as mothers but also as workers. The social insurance state came in to safeguard the position of wage-earners, whereas the social service state guaranteed the continuity of caring in societies where the responsibility for caring was no longer primarily the task of women in the household, but of the operators of the welfare state. The gendered differences in the labor force, and the differences in objectives of the two legal cultures, reproduce themselves in the modern Nordic welfare states. The social insurance state continues to provide benefits aimed at income maintenance and individual economic independence, while the social service state provides the care and the services needed for coping with everyday life.

The focus of the social insurance state, to provide work-based benefits for wage-earners, means that it often excludes people with disabilities, because of their low participation in the labor market. The legal culture of the social service state is more inclusive of people with disabilities because of the mainly residence-based benefits, aimed at providing support and services in everyday life.

82 Anttonen 1997.
84 Anttonen 1997, p 11.
While the social insurance state and the social service state originated in the welfare state itself, albeit at different times, the EU state legal culture has more contemporary origins. The EU state is treated in this thesis because of the need to incorporate contemporary political and legal developments theoretically into the Nordic welfare states. These developments are described by legal scholars in the Nordic countries. For example, Matti Mikkola has written extensively about social rights in Europe and the EU, and Karl Harald Søvig has identified a Europeanization process in Nordic social law. Lena Wennberg has written about the Nordic model as a multi-level welfare system with a complex combination of local, national and EU law and policies. Thomas Erhag has written about the challenges to Nordic social security posed by the free movement within the EU and EU citizenship. Kirsten Ketscher has written about Danish and European social law and the influence of EU anti-discrimination law on social rights. Anna-Sara Lind discusses in depth the constitutional status of social rights in Sweden, Finland and the EU, and identifies the EU as an agent which stimulates the juridification of social rights. Eva-Maria Svensson and Anu Pylkkänen have written on the challenge to the redistributive Nordic model posed by EU anti-discrimination law, and how an emphasis on individual human rights can disguise a gradual weakening of collective social rights. Both Lena Wennberg and Kirsten Ketscher discuss contrasting legal conceptions of citizenship, universalism and social security in the Nordic countries compared with the EU, and Wanna Svedberg discusses the important implications of EU competition law on national general public transport law. Maria Ventegodt Liisberg has described and identified the impact of EU anti-discrimination law on Danish and Swedish disability law.

The EU influences law, politics and administration in Sweden, Denmark and Norway, especially through the dynamics created by the EU single market integration process. Norway, unlike Denmark and Sweden, is not a member of the EU, but it is a signatory of the Agreement on the European Economic Area (EEA) which has been in force since 1 January 1994. The Commission of the European Communities notes that the EEA Agreement extends single market legislation (with the exception of Agriculture and Fisheries) from the

---

86 Mikkola 2010 and Søvig 2010.
87 Wennberg 2008.
90 Lind 2009.
93 Ventegodt Liisberg 2011.
94 Reichel 2013.
EU to Norway, Iceland and Liechtenstein. Through the EEA Agreement, Norway also participates in a number of EU agencies and programs. The Commission even states that:

“Norway is as integrated in European policy and economy as any non-member State can be, and the close EU-Norway relations generally run smoothly.”

Law and policy in Sweden, Denmark and Norway are thus heavily influenced by EU law and EU policy, and the Nordic welfare states have to be understood in an EU context.

Unlike the social insurance state and the social service state, the rationality of the EU state is aimed neither at social security nor at care. The EU state is not characterized by welfare state ideology or values, but is aimed instead at competition neutrality on a public procurement market through the promotion of free movement of capital, goods, services and workers. The EU state safeguards the autonomous position of free enterprise and competitive bidding through the protection and promotion of private profit. The EU state is prominent in the transport sector. In the EU Regulation of public passenger transport services by rail and road the view of general public transport is in line with that applicable to business services, which means that it should be subject to competitive bidding. This view is also reflected in national policy documents in which the provision of general public transport is conceptualized as a service market, where the only relevant actors are sellers and buyers. Just as in the case of the welfare states, it is necessary to understand national law concerning public transport in the EU context. The EU state, therefore, is one major influence on the normative structures regarding the right of people with disabilities to transport in everyday life.

The legal culture of the EU state has a great impact on the social insurance state and the social service state because of the need to coordinate social security between the Member States, and to formally structure most social benefits as either work-based or residence-based. Because their
participation in the labor market is so low, this has potentially huge consequences for people with disabilities making them often ineligible for work-based benefits.

In this thesis all three legal cultures, the social insurance state, the social service state and the EU state appear to varying degrees, and in different combinations, as the normative structures shape a social citizenship for people with disabilities. The transport provisions in this thesis have evolved within either the social insurance state or the social service state as disability benefits and services. Gradually, the legal culture of the EU state has had an impact. Regarding the special transport services studied in Part II of this thesis, the movement from a social service state legal culture towards an EU state legal culture is clearly visible. Regarding the car allowances and cash benefits, studied in Parts III and IV of this thesis, the social insurance state continues to be the more dominant legal culture.

1.2.5 Framework Law and Social Rights in the Nordic Welfare States

Framework law is both a legislating technique and a major part of the legal cultures in the Nordic model. Framework law can be understood as a legislating technique where regulations are seen as incomplete, as if there is a frame which needs to be filled. Framework legislation only provides the parameters against which activities and decisions in the welfare state can be measured.102 The use of framework legislation in the Nordic welfare states has reinforced a strong belief in societal change governed by law.103 As a legislative technique it is largely used for needs-based and residence-based benefits. Framework legislation can be characterized as establishing outer normative boundaries, within which there is room for normative development and change. When framework legislation is implemented, the important normative decisions are made by public authorities, either as practical implementers or decision makers, or as supervising authorities. These normative decisions are often supported by other sources of law than the traditional. Framework sources include, for example, handbooks, administrative guidelines, and computerized administrative routines.104 Decision-making within framework law often requires multiple professional

---

102 Gunnarsson, Svensson and Davies 2007, p 7.
103 Wennberg 2007, p 177 f.
competences, for example, those regarding the labor market or various social, medical or psychological fields.\(^{105}\)

Framework law as a part of legal cultures in the Nordic model is far-reaching and influences much more than framework legislation itself, and the implementation of it. As a part of legal cultures, framework law influences all kinds of social law in the welfare states, moving it towards what could be viewed as an inherent pluralism in law,\(^{106}\) or at least towards a high tolerance of differences in practices and outcomes within the national framework. For example, framework law is associated with far-reaching local self-governance. When the Swedish constitution was revised in the 1970s, the national government stated that there should be close cooperation between national and municipal governments, and that the constitution must provide flexibility, in that the full extent of municipal competence and responsibilities were not to be regulated constitutionally. It was also considered important that the municipalities could finance through taxation whatever tasks the parliament assigned to them.\(^{107}\) This means that political, legal and moral influences in the localities can bring about significant normative change without any formal change in the law. Social law in the welfare state becomes an expression of rationalized solidarity; a dual responsibility of the welfare state and the individual, based on reason. This redistributive solidarity can be understood as the core component of the content within the frames. Framework law in the legal cultures can thus be understood as a means towards realizing the ends of solidarity.\(^{108}\)

To be able to identify normative structures in framework legal cultures, it is necessary to be critical towards the law and its legal definitions. The openness and differences of the framework law mean that different normative and ideological ideals interact, and the logic of separation operates at many levels simultaneously. This means that the legal position of individuals can vary throughout the system, depending on which ideas are allowed to dominate at any given time.

Because of this open character of framework law, legal scholars in the Nordic countries have often been interested in the strength of individual social rights. One specific complexity of social rights in a welfare state is that they almost always require economic funding, necessitating political prioritization of

\(^{105}\) Klausen 2002.

\(^{106}\) For a discussion on inherent pluralism in law, see Davies 2005.

\(^{107}\) Prop 1973:90, p 190 ff.

available resources. Social rights in a welfare state also tend to be neither particularly individual in character, nor always easy for a citizen to enforce in courts or otherwise. Accordingly, many different models and criteria for analyzing the strength of social rights have been presented in legal research. The empirical study in Parts II-IV of this thesis uses a set model of questions directed to framework law. These questions, and the legal material at which they are directed, are discussed below.

1.2.6 Method and Sources for Parts II, III and IV

In using the everyday life perspective the thesis takes into account both that transport matters to people on a daily basis, and the ideological values of individual autonomy and equal participation. Because transport is important for everyone in enabling other activities and opening up society on a day-to-day basis, the material aspect of the legal right for people with disabilities to travel, has immediate and tangible consequences for their possibilities and their choices, and ultimately for their social citizenship. Wanna Svedberg argues that the everyday life perspective should be important in legal research, because the law in everyday life is central to people’s possibilities to act and shape society and their own lives. In this study everyday life for people with disabilities is the chosen perspective on the law.

Based on the importance of eligibility criteria and benefit levels for a social citizenship in law, and on the understandings of the legal cultures in the law of the welfare states, the method for the study in Parts II-IV is based on a set of five questions:

- Is there a rights/duties relationship between the public and the individual?
- Who is eligible?
- How is an entitlement impacted by public funding?
- Who is obliged to provide?

---

109 See for example Gustafsson 2002, p 23.
110 Gustafsson 2005, p 467.
112 Pettersson 2013.
113 Svedberg 2013, p 59.
What are the legal guarantees?

The material is always subjected to these questions in the context of the everyday life perspective. The questions, and the everyday life perspective, remain the same throughout the study of all transport provisions in all three countries. Certain questions become more or less important depending on the legal construction of every specific provision.

The material from the three countries displays differences but also many similarities. All provisions but one (special transport services for people with disabilities in Norway) are ultimately governed by statute law. All statute law in the thesis share the characteristics of framework law, leaving much administrative discretion to the responsible authorities. Most provisions come with general guidelines which are considered significant sources of law in the study, because they are treated as such by the authorities and administrative courts that make the decisions. Regarding two provisions, special transport services in Sweden and contribution for travel by individual means of transport in Denmark, no guidelines are national in character, but wholly municipal, meaning that there are hundreds of different guidelines in use simultaneously. In these instances the guidelines are not analyzed or referenced per se, but the provision is analyzed instead through what is left to municipal discretion and what is not. The limits of administrative discretion become visible, at least in part, through case law. Administrative case law is always considered a major source of law for those provisions which can be appealed. For each provision, the sources of law are gathered according to what is regulated by statute law, what is governed by general guidelines and what can be tried in administrative courts. Within each source of law, regarding each provision, the method is to apply the questions to the available material. The method applied in finding answers to the questions is a traditional legal method, describing and systematizing the legal material. The general approach of the study, however, is not intended to describe or construct a coherent system of law. The traditional legal method is used instead to reveal and display the normative structures.

The sources are acts of parliaments, executive regulations issued by the national governments, general guidelines from supervising authorities, administrative case law, internal administrative guidelines etc. Thus a major source of knowledge in many instances may be general guidelines or a recommendation issued by a government department. In those instances when such sources are considered very important, the study translates and quotes these sources extensively. This is done in order to make clearly visible the normative force of such sources of knowledge, where otherwise the normativity may not be readily apparent, or even readily available, if such
sources are only briefly summarized or referred to. In the entire thesis, all translations from Swedish, Danish and Norwegian to English are my own.

There is an ongoing discussion in all three countries regarding the approach to the sources of framework law. Norwegian scholars in social law have expressed ideas of a normative set of legal sources existing in the welfare state.\textsuperscript{114} Danish scholarship has a contested view on what counts as sources of law in the welfare state, ranging from a normative view to an outright critique of a legal positivist approach to social law.\textsuperscript{115} Swedish scholars in social law often stress the importance of systematizing social law but also underscore the vagueness and complexity of the legal sources in the welfare states compared with the \textit{Rechtsstaat}.\textsuperscript{116} In all three countries, legal scholarship has articulated a forceful critique of a normative view of the sources of social law, and has also stressed the importance of viewing the sources of social law as open and contextual.\textsuperscript{117}

The analysis of the individual entitlements in Sweden, Denmark and Norway shows that transport provision can be systematized into three categories, with each category broadly corresponding to a specific strategy to compensate for an inability to travel using general public transport. The provisions dealt with in Part II are special public transport services, usually taxis which replace general public transport with a more adapted and accessible way of traveling. The provisions covered in Part III are special private transport facilities, the benefits and services which aim to provide those entitled to them with private cars. The provisions studied in Part IV concerns cash benefits which aim to reimburse those entitled for their extra travel costs. The study cannot capture any normative changes after 31 December 2014.

The following chapter, Chapter 2, discusses important principles of social and disability law, as they have been described and debated in legal research in the Nordic countries. Chapter 3 then presents and analyzes disability law and welfare state ideologies in Sweden, Denmark and Norway. The Chapter also brings to a close the first part of the thesis. This is followed by the bulk of the thesis, Parts II-IV, containing the empirical study of the law on the right to transport in the three countries. Finally, Part V, which outlines and discusses the conclusions and a social citizenship for people with disabilities.

\textsuperscript{115} See for example Andersen 2006 and Ketscher 2008.
2 Principles of Social Law and Disability Law in Nordic Scholarship

The Nordic model as an academic construct conveys similarities between the five countries Finland, Sweden, Denmark, Norway and Iceland. The use of the term Nordic model implies a bird’s eye perspective, where the big picture is important and minor differences do not matter. These similarities, however, are not always obvious when studying or comparing specific provisions in the countries.

This is evident as the Nordic model is not only a subject for research. The term also has a political meaning, and is often used by those who see it as important to defend the welfare state and the solidarity of the redistributive collective institutions of industrial relations. In this sense, the Nordic model becomes meaningful as a way in which to communicate that social justice and legitimacy in the Nordic countries cannot be separated from the law of the welfare states.

Since the 1970s a tradition has existed in social law research of discussing principal matters on a Nordic level. The ongoing discussion is often based on a belief that the principles and patterns of the law of the five welfare states are important for an understanding of the entire field of social law in the Nordic countries. Because of its significance in the Nordic welfare states, scholars in social law have been active in detecting, describing and systematizing the principles of framework law. The open normative character of framework law has allowed legal scholars to pursue a systematic approach that highlights the importance of legal principles, in order to bring some comprehensive order to the law in the welfare states.

The complexities of the legal cultures in the welfare state have sparked interesting theoretical discussions about researching social law. In the early 1980s questions arose concerning how to apply traditional legal methods to the study of framework law. A new tradition of research in social law started to grow among legal scholars. In traditional Nordic legal scholarship law and politics have sometimes been dealt with as two distinct and separate

---

121 See for example Mikkola 1981.
entities.\textsuperscript{122} While law was viewed as a set of value-free judgments, politics and political science were regarded as emotionally charged with subjectivity and conflicting values.\textsuperscript{123} One major characteristic of the traditional legal dogmatic tradition is the constant aspiration to achieve systematic coherence. The main task for legal scholarship, in the dogmatic view, was to create consistency and systematic order out of the chaos that comprises the various parts and principles of the legal system.\textsuperscript{124} In face of the increasing use of framework legislation in the welfare states, however, a dogmatic approach became untenable.

Nordic scholarship concerning the law of the welfare states had to break free from the old and dogmatic view of legal scholarship, and establish itself as an academic discipline within law.\textsuperscript{125} Anna Christensen, for example, made an important contribution when she pointed out that morals are an important source for the creation of law. Much of the content of the law, especially regarding social law, is a codification of the morality and values in society. This process of codification creates certain structures, or normative patterns, in the law enabling legal scholars to identify and analyze those structures which are persistent and frequent.\textsuperscript{126}

The continuing discussion among Nordic legal scholars has made it possible to debate structures, patterns and principles which might not have been so visible on the national level alone. Drawing upon this debate, this chapter discusses and analyzes important principles of social law and disability law, as they have been identified and described in Nordic legal scholarship. Before the legal principles are examined, a brief summary is presented of the Nordic model as commonly described in social studies.

Within the social studies understanding of the Nordic model, services for both children and elderly people are widely available, and the participation of women in the paid workforce is greater than anywhere else in the world. The underlying principle is described as the principle of universalism, and there is said to exist a uniform standard of services where all citizens have access to the services they require within the same system. Local self-governance is described as a cornerstone in the Nordic social service model and the local authorities are commonly tasked with planning and funding the production of

\textsuperscript{122} See for example Strahl 2009 and Peczenik 1995.
\textsuperscript{123} Persson 2007, p 52.
\textsuperscript{124} Peczenik 1995, p 151.
\textsuperscript{125} Bernt 2013.
\textsuperscript{126} Christensen 1996, p 527.
social services.\textsuperscript{127} Income equality and a high overall employment rate are also mentioned as setting the Nordic countries apart, together with large public sectors. Redistribution is achieved mainly through social security rather than the tax systems. Trade union membership is high, and collective agreements widespread. All Nordic countries have active programs designed to help the unemployed to find jobs and thus be able to provide for themselves, and the Nordic model is described as fostering a high level of trust in both society and government.\textsuperscript{128} This, then, is the social context, as understood by political and economic research, of the Nordic welfare states.

2.1 Important Principles in Nordic Social Law

In Nordic legal scholarship, the different rationalities of the traditional \textit{Rechtsstaat} and the modern welfare state respectively, may be used as an introduction to any comprehensive discussion about principles in social law.\textsuperscript{129} The core principle of any democratic state has been stated as that of political equality among its citizens.\textsuperscript{130} This principle binds the majority in a democratic welfare state so that no political decisions that violate it can be valid. According to such understandings, any political decision that violates the democratic liberties of any private citizen or any group of citizens is illegitimate, as these democratic liberties are vital in upholding the very principle of political equality. From the perspective of the \textit{Rechtsstaat}, an important feature of social rights is that they are subject to appeal and revision in the courts, to ensure that individuals can claim their rights.\textsuperscript{131} While the formal rationality of the \textit{Rechtsstaat} in a certain sense lies at the core of all democracies, the welfare state has its own rationality oriented towards the material realization of social rights.\textsuperscript{132}

The competing rationalities can be characterized as the values of legal predictability and welfare state ideology, respectively. To a certain degree these two sets of values will overlap and neither can be said to have an intrinsic advantage over the other. Welfare state ideology will include not only material considerations but also some concern for the legal rights of the private individual. One example of such a material consideration is economic and

\textsuperscript{127} See for example Blomqvist & Rothstein 2000, Åmark 2005 and Stamsø (ed) 2012.
\textsuperscript{128} See for example Calmfors 2014.
\textsuperscript{129} See for example Vahlne Westerhäll 2002.
\textsuperscript{130} Vahlne Westerhäll 2002, p 36 ff and p 61. See also for example Blomqvist and Rothstein 2000, p 29.
\textsuperscript{131} Adler & Stendahl 2012, p 269.
\textsuperscript{132} Lind 2009, p 437.
social security. Procedural considerations will fall mainly within legal predictability. Procedural considerations must be understood in the broadest possible sense, so that certain democratic values, such as local self-governance, will also be understood as a procedural consideration. Municipal self-governance in the Nordic welfare states is usually not legitimised through the material legal rights which the municipalities can provide, but through the decision-making process they provide.¹³³

The basic ideas of the welfare state have been articulated as goal-oriented legal ideas.¹³⁴ While classic civil and constitutional rights are formal rights, constructed to achieve formal protection and formal equality among the citizenry, the social rights of the welfare state are constructed to impact on the material needs of the private individual and to make sure that groups of individuals with certain needs are not deprived of material assistance by other groups, presumably possessing greater material resources. Every formal and material interest protected in the democratic welfare state can in this way be viewed as being of a legal nature.¹³⁵

What distinguishes framework law, and makes it stand out compared to other types of Nordic law, is that current political, legal and moral influences can accomplish significant normative change, without any formal change in the structure of the law. Framework law is an expression of rationalized solidarity; a dual responsibility of the welfare state and the individual, founded on reason. This rationalized solidarity is the core component of the content within the framework. Framework law can, therefore, be understood as a means towards realizing the ends of solidarity. Within the framework of rationalized solidarity, however, social law has trended towards fragmentation, making it more open in character, both to neoliberal criticism and increased exclusion, but just as readily to development and increased inclusion.¹³⁶

The ethos of social law in the welfare state has been described in Nordic legal scholarship as the solidarity principle.¹³⁷ According to this principle the welfare of the collective society is considered more important than individual interests. The solidarity principle is based on redistributive justice which aims to combat the consequences of exploitation, exclusion and competition

¹³⁴ See for example Svensson 2007, p 42.
¹³⁷ Kjønstad 2007, p 17 f.
created by, for example, the market economy.\textsuperscript{138} There is also an ongoing discussion regarding the extent to which the solidarity principle is being challenged by the EU and the internationalization of social law.\textsuperscript{139}

Over the years many fundamental legal principles in social law have been identified. One basic principle in the modern welfare state is the principle of economic independence and self-sufficiency.\textsuperscript{140} Individuals should take care of themselves and their immediate family. The welfare system assumes responsibility first when the ability to provide for oneself has diminished substantially, or ceased entirely. This principle is not applied without exception, but it generally takes precedence over many other principles in social law, and has been understood as imposing a legal duty to provide for oneself.\textsuperscript{141}

Countering the above is the equally fundamental principle of need.\textsuperscript{142} The principle is based on assisting individual self-help.\textsuperscript{143} This principle reflects the other principles of economic independence and self-sufficiency, and asserts that aid and services are provided in accordance with an actual material need of the individual. Aid is available from the welfare state, but only to the extent that the people concerned cannot themselves take care of the material needs.

The payment principle refers to the situation that services which are provided by the welfare state are seldom entirely free of charge, meaning that anyone who is entitled to, and receives, a service shall pay a fee for that service.\textsuperscript{144} This, however, is not to be understood as some sort of prime cost principle, rather the fees are often subsidized to a very significant degree compared with the actual cost of the services.\textsuperscript{145}

Other important legal principles include that of repayment. Whenever a person has received a cash benefit, either in error or in a situation that is covered by the main principle of economic independence and self-sufficiency, it is to be repaid. This principle is not consistently applied, as exceptions do occur, for example after a period of limitation or when application would not be equitable. In conjunction with the principle of repayment there is the legal

\textsuperscript{140} See for example Ketscher 2008, p 58 f.
\textsuperscript{141} See for example Kjønstad 2010, p 16 and Kjønstad & Syse 2012, p 74.
\textsuperscript{142} See for example Ketscher 2008, p 66 f and Wennberg 2008, p 120 f.
\textsuperscript{143} Kjønstad 2007, p 16.
\textsuperscript{144} Ketscher 2008, p 65 f.
\textsuperscript{145} Kjønstad & Syse 2012, p 74 f.
principle which prohibits double support. If, for instance, a person is ill but still receives salary for the period of illness, they are not entitled to receive sick benefits simultaneously from the welfare state.\textsuperscript{146}

One characteristic principle of social law is that of legal status asserting that a specific characteristic of a person is known and accepted to the extent that this characteristic, in and of itself, is sufficient for the individual to be entitled to certain benefits or services.\textsuperscript{147} Typical examples are the right to have an old-age pension when a person reaches 65 years of age, or the right to child allowances for children who are yet not 18 years old, or when certain impairments confer a specific legal status on a person in relation to benefits or services.

One principle which breaks with the main principle of economic independence and self-sufficiency is the assurance principle.\textsuperscript{148} This principle is mainly brought up in social security law where a number of benefits are distributed on the basis of the actual loss of income, not on the individual’s economic situation in general. Very closely related to the assurance principle, is the income loss security principle.\textsuperscript{149} In social security law it is the norm, rather than the exception, that any benefits are directly related to the actual loss of income; be it due to sickness, unemployment, caring for a child with a disability etc. This principle is a reimbursement principle in social security law covering compensation for actual loss of income.\textsuperscript{150} However, any cash payment will typically be strictly capped at a given level, meaning that higher income earners will not, in fact, have complete income loss security, only basic security.\textsuperscript{151} The reimbursement does not depend on the actual cause of the income loss, but on the loss as it is conditioned by the labor market. If, for example, the loss is due to taking on unpaid care work, the principle does not apply.\textsuperscript{152}

One important dimension in the legal structure of a specific social benefit or social service is whether the entitlement is founded on statute law or a discretionary principle.\textsuperscript{153} In the latter case the benefit or service is founded on a number of criteria which are not unambiguous, and require a variety of circumstances, not described in a detailed fashion in statute law, to be part of

\footnotesize
\begin{itemize}
\item\textsuperscript{146} See for example Ketscher 2008, p 68 ff.
\item\textsuperscript{147} Ketscher 2008, p 71.
\item\textsuperscript{148} Ketscher 2008, p 72 f.
\item\textsuperscript{149} Kjønstad 2007, p 16.
\item\textsuperscript{150} Kjønstad (ed) 2007, p 29 f.
\item\textsuperscript{151} For one example of many, see Chapter 25 Section 5 of the Swedish Social Security Act.
\item\textsuperscript{152} See for example Brækhus 1996.
\item\textsuperscript{153} Ketscher 2008, p 74 f.
\end{itemize}
the decision. Both can be brought to bear within the same benefit or service, and within the same statute law, depending on the situation and the individual.154

2.2 Local Self-governance and Law in the Welfare States

It is characteristic for the Nordic welfare states that municipalities and counties exercise self-governance and are, together with the national governments, important material implementers of the benefits and services provided for in social law.155 As municipalities are charged by the states with social responsibilities, it is assumed that these tasks can be executed in a way that is deemed proper by the respective municipality.156 These assumptions can be subjected to law which set down boundaries to municipal discretion.157 An important aspect of framework law is that the local implementation of social law has far-reaching consequences for the legal position of the individual citizen.158

The Nordic system of self-governing municipalities obliged to ensure provisions for various individual rights founded in national law has been described in legal scholarship as illogical and self-contradictory.159 On the one hand the national government emphasizes local self-governance and extends decentralization efforts, on the other municipal decisions and measures are regularly controlled, supervised and corrected by the national administration and the judiciary, with the aim of achieving both formally equal treatment and materially equal outcomes under the law. Municipal discretion must thus be understood within the framework law context of the welfare states.

The arguments for the far-reaching municipal responsibilities in the Nordic countries usually concentrate on the need for local self-governance, for local decision making and for local funding. Local, in these instances, is generally understood as being synonymous with municipal. Municipal self-governance and decision-making are considered necessary for finding the best solutions and adapting the benefits and services to varying local conditions, such as

156 See for example Christiansen and Petersen 2001, p 153.
157 See for example Ketscher 2008, p 26 and p 280 f.
159 See for example Graver 2007, p 516.
demographic, geographical and other structural circumstances. Municipal funding is thought to be necessary to uphold financial responsibility and control in the welfare system. The legal basis of municipal self-governance is municipal competence, generally conferred by law or by custom and not by delegation from the state. A Nordic municipality is thus a distinct legal subject which is democratically controlled by its members. The Nordic municipalities are both political institutions and administrative authorities. As political institutions the municipalities are politically responsible to the local citizenry in elections. As administrative authorities the municipalities constitute a distinct level within the public administrative system.

The existence of national regulation of municipal coercive actions, for example regarding certain efforts to treat alcohol or drug addicts or custody of abused children, is relatively uncomplicated. In such instances the mere concept of legality requires that any encroaching action which interferes with basic human rights by any government authority, be it local, regional or national, must be supported by law. However, when standard local provision of various social services is regulated nationally, tensions are created within the system and municipal self-governance becomes specifically a legal problem. In these instances the motives behind national regulation and national standards are also securing equal treatment and legal predictability. These legal goals conflict with the ideals of local self-governance which rest on local variations, individual differentiation and adaptation to specific local circumstances. Tension between the national level and the objectives of achieving formal and material equality between citizens on the one hand, and the local level with its priorities on the other hand, is further increased by the extensive organizational freedom among counties and municipalities. Even when individual social rights are comparatively strong, from a normative perspective, the differences in local organizations and in the attitudes of local administrations have a tendency to undermine the equal realization of individual rights. Through framework law the administrative and organizational perspectives can be seen as having gained the upper hand over individual rights. Ideological perceptions of local autonomy, and perceptions of individual social rights as being somehow a lesser kind of rights, are certainly having an impact in the practices of the welfare states.

160 See for example Statskontoret 2011.
163 See for example Kjellevold 1997, p 10 and p 49.
2.2.1 Administrative Discretion and the Welfare State

Different legal traditions in Sweden, Denmark and Norway have evolved around the theoretical understanding of administrative discretion in social law. Broadly speaking, Denmark and Norway have a tradition where a formal distinction is being made between administrative discretion and the use or application of law. This formal distinction may become important when an administrative decision is appealed to an administrative court, as only that part of a decision which is based on the application of law is open to review by the administrative court, but not any part of the decision which is based on administrative discretion.

The formal distinction is seen in statute law. In Denmark, Section 69 of the Act on Legal Security and Administration in the Social Field states that the National Social Appeals Board can try legal questions. Legal questions in line with the formal distinction, are to be understood as concerning the application of law and not as questions of administrative discretion. In Norway, Section 34 of the Administrative Procedure Act states that an instance of appeal shall emphasize consideration for municipal self-governance when reviewing administrative discretion.

It is not always clear, even in theory, where the line between administrative discretion and application of law should be drawn, or even if the courts should always respect administrative discretion as such, without exception. In Norwegian legal scholarship, the importance of the courts also reviewing administrative discretion when coercion against an individual is part of a decision, has been argued. In Danish legal scholarship it has been suggested that today the formal distinction is more important for how a decision is reviewed in court, rather than if it can be reviewed.

The formal distinction between administrative discretion and application of law is rooted in a tradition of administrative law which is older than the welfare state. While the distinction might be formally important in appeals,
it also conveys an ancient and formalistic approach to social law.\textsuperscript{175} One consequence of the distinction might be that some aspects of decisions in social law become construed as extra-legal, in the sense that they are not treated as law when, in fact, provisions in the Danish and Norwegian welfare states are governed by law. The formal distinction, together with a formalistic Rechtsstaat approach to social law, might create tensions in connection with welfare state rationality.

Sweden has a different legal tradition regarding administrative discretion. An administrative decision concerning a social provision is seen as a material legal decision, and is thus viewed as an application of law.\textsuperscript{176} Unlike Danish and Norwegian courts, Swedish courts do not distinguish formally between the parts of an appealed decision which might fall under administrative discretion of the original decision-making authority, and which are strictly applications of the law. In this sense a Swedish administrative court may always review the entire administrative decision. Nevertheless, in the Nordic welfare states there is a constant tension between Rechtsstaat rationalities of legal predictability and formal equality, and the ideological values of local self-governance.\textsuperscript{177}

\textbf{2.2.2 National Supervision of Municipal Self-governance}

With municipalities and counties often responsible for materially implementing the formal social rights granted at the national level, national supervision of the local authorities becomes important. Any municipal service or enterprise may be subject to national supervision in the sense that the national level attempts to control the observance of laws and regulations in the municipalities.

At the beginning of the 20\textsuperscript{th} century the differences between the Nordic countries were quite considerable in terms of the process for social reform and the choice of social solutions. When the Social Democrats came to power in Sweden, Denmark and Norway during the 1930s the similarities between the three countries grew regarding policy outlook and the choice of practical solutions to social problems. On the local level, however, the countries retained certain idiosyncrasies. In Norway the municipalities were the major actors in social policy. In social research the term welfare municipality was

\begin{itemize}
\item \textsuperscript{175} See for example Kjønstad 2012, p 56 f.
\item \textsuperscript{176} See for example Warnling-Nerup 2012.
\item \textsuperscript{177} See for example Gustafsson 2002, p 370.
\end{itemize}
used to describe the Norwegian situation. For example, the Norwegian capital, Oslo, for a period ran its own municipal social security program, with retirement and maternity benefits.\(^\text{178}\) Activity regarding social policy was also considerable in many municipalities in Denmark, although not as far-reaching as the Norwegian experience. In Sweden, however, independent municipal initiatives were rarer and left no great mark in the more centralized Swedish context. Even today, legal research comparing social assistance, for example, has demonstrated that historical context clearly matters in the evolving of legal rights and normative patterns and structures in the Nordic countries. Norway has the least rights-based social assistance scheme and local discretion is considered to be of paramount importance, with national authorities only issuing guidelines that are recommendations and not binding upon the municipalities. In contrast the Danish social assistance scheme has abandoned the classic open model of legislation for a more claim-rights oriented model. Sweden appears to be somewhere between the Norwegian and the Danish positions. Like Norway, Sweden retains the classic open framework structure of many regulations regarding social assistance. However, the centralizing traditions in the Swedish welfare state, and the presence of binding national guidelines concerning many aspects of social benefits, and possibilities for administrative appeal, indicate that Sweden is in a middle position regarding the right to social assistance.\(^\text{179}\)

In Sweden the system for national supervision of municipalities and counties has been characterized as vague, weak and not prioritized. Further, the system is described as lacking transparency, the regulation of the supervising activities as being both extensive and fractured and the supervising roles of authorities as unclear.\(^\text{180}\) Supervision in Sweden is handled by a vast number of authorities according to the principle of sector responsibility. While the preconditions for supervision per se are set forth in law, the practical boundaries between different authorities and areas of supervision and the practical implementation of supervising activities are regulated by the responsible authorities themselves. Some supervising authorities exercise supervision over specific activities throughout the country; others exercise supervision only over certain parts of the nation. Some are organized with one central supervising authority and several regional branches of the same authority exercising the actual supervision; others are divided into regional branches but with a central division exercising the supervision for the whole country. Most national Swedish authorities that supervise municipal services and activities supervise only the observance of the laws, as issues regarding

\(^{178}\) Åmark 2005, p 31 f.
quality are considered to fall under local self-governance. Only when quality criteria are specifically entered into law may the quality of municipal services also be supervised. The possibilities of imposing sanctions in the Swedish system are generally described as being weak and ineffective but there are exceptions, particularly in the field of social law where supervising authorities, in some instances, may go to administrative courts and demand the compliance of municipalities under penalty of a fine. Administrative supervision is usually exercised ex officio and thus no individual needs to file a complaint for supervision to be initiated.

Supervision of municipal decisions by the Swedish administrative courts may take one of two specific forms, both of which presuppose that someone has appealed the decision to an administrative court. One form is the legality appeal under Chapter 10 of the Swedish Local Government Act. A legality appeal can be filed by any member of the municipality (or the county or region, as applicable). In such complaints the competence of the administrative court is limited to determining whether the municipal decision in question is in accordance with the law or not. Only the legality of the municipal decision is tried, any other aspects or qualities of the decision, such as its general appropriateness, cannot be tried. Ultimately the court may, therefore, arrive at only one of two possible decisions. Either the municipal decision is upheld in its entirety, as it is deemed to be in accordance with the law, or the municipal decision is revoked in its entirety as unlawful. It goes without saying that legality appeals are very blunt instruments for supervisory use, yet legality appeals are the only remedy that is always open to an individual member in a Swedish municipality. The other form of administrative court supervision of municipalities is the administrative appeal. Such an appeal may be filed by anyone who is personally affected by the municipal decision. The administrative appeal is in effect an ordinary court appeal where the court has the power to confirm, reverse or vary any part of the decision under appeal. However, administrative appeals are generally possible only when explicitly allowed in statute law.

When permitted, administrative appeals are a much more powerful tool in the hands of the administrative courts and private individuals in exercising supervision over municipalities. For example, all municipal decisions regarding the many social services and benefits which can be granted under Chapter 4 Section 1 of the Swedish Social Services Act are subject to administrative appeal under Chapter 16 Section 3 of the Act.

182 See for example Lindquist 2005, p 24 f.
In the field of public administration the Swedish administrative system is generally characterized by independent administrative authorities and ministerial government is prohibited. The Danish system, however, is characterized by the exact opposite, with vast responsibilities lying with the ministers in the cabinet and their ministries. The national supervision of the Danish municipalities is regulated mainly under Chapters 6 and 7 of the Act on Municipal Government\footnote{Bekendtgørelse nr 186 af 19/02/2014 af lov om kommunernes styrelse.}. In 2007 the Danish municipalities became subject to unified supervision exercised by the regional state administrations. A decision regarding supervision of the state administration that goes against a municipality may be appealed to the Ministry of Social Welfare, which also regulates the supervising activities of the state administration. The supervision of the state administration focuses on municipal observance of laws and regulations and mainly concerns supervision of the legality of municipal decisions and actions. As long as the municipal decision is found to be in accordance with the laws and regulations it is upheld as the supervision does not take into account anything that falls under municipal discretion, typically questions about the quality of municipal services etc. As in Sweden, the supervision by the state administration is usually exercised ex officio and thus no individual needs to file a complaint to initiate it. A municipal decision that goes against the law can be revoked by the supervising authority. A number of sanctions are available to the Danish government; individual members of the municipal council may be fined or claims for damages may be made against them. Further, the supervising authority may file claims for declaratory judgments against a municipal council that has either made an unlawful decision or refuses to take such action as the municipality is obliged to do.\footnote{See for example Indén 2008, p 30 and p 100 ff.}

Much like the Danish administrative system, and thereby differing from the Swedish system, the Norwegian administrative system is characterized by the respective ministries at the top of the hierarchical national administrative organization. Control of the administration and important oversight responsibilities rest with the cabinet ministers and their departments, according to sector responsibilities.\footnote{Eckhoff and Smith 2008, p 130.} Almost any decision made by a Norwegian municipality, or county, can be taken under supervisory advisement by the department responsible for the sector, ex officio, for a departmental decision on the legality of the original decision, see Section 59 Point 5 of the Norwegian Local Government Act\footnote{Lov 25 september 1992 nr 107 om kommuner og fylkeskommuner.}. This gives the departments the possibility of exercising supervision by deciding on legality without the
need for a specific complaint from a member of the municipality or county or from someone directly concerned by the effects of the decision. The departments regularly issue regulations and guidelines in their respective sectors of responsibility. However, apart from the departmental control, some Norwegian national authorities also exercise supervision over the municipalities and counties. The national county governors, for instance, regularly exercise supervision over many fields of county and municipal activity.\textsuperscript{188} The Norwegian government noted that, regarding the old Social Services Act, limited possibilities for appeal accord more with the principles of municipal self-governance and consideration for the municipalities’ freedom to design the benefits and services themselves. The government’s view was that it would be unfortunate if the shaping of social policy in the municipalities should, in practice, be moved from municipal organs to a national authority.\textsuperscript{189}

Danish supervising authorities are described as having access to a greater arsenal of sanctions, than their Swedish counterparts, such as seeking declaratory judgment, claiming damages or claiming the penalty of fines from individual members of intractable municipal councils.\textsuperscript{190} The Danish government’s possibilities for controlling the municipalities might, therefore, be better than those available to the Swedish or Norwegian governments. However, the frequent instances where Swedish social welfare law allows for administrative appeals considerably strengthens the possibilities for private individuals to claim their social rights, as compared to mere legality appeals against municipal decisions. In certain cases Swedish law also allows for administrative supervising authorities to penalize intractable councils by levying fines, thus, in such cases, giving the Swedish supervising administrative authorities some considerable clout.\textsuperscript{191} When comparing all three countries from the perspective of individual social rights, both administrative supervision and court supervision of municipalities in Norway are arguably the weakest and, consequently, Norwegian municipal self-governance is arguably the strongest in the three countries.

A third form of supervising local authorities, apart from governmental and court supervision, is the national supervision by the public Ombudsmen system. Such Ombudsmen are present in all three countries, the Parliamentary Ombudsmen\textsuperscript{192} in Sweden, the Parliamentary Commissioner

\textsuperscript{188} See for example Graver 2007, p 26 and Bernt, Overå and Hove 2002, p 715.
\textsuperscript{189} Ot prp nr 29 (1990-1991), p 125. See also Syse 2007, p 127 ff.
\textsuperscript{190} Indén 2008, p 109.
\textsuperscript{191} See for example Sections 28 a and 28 b in lag (1993:387) om stöd och service till vissa funktionshindrade.
\textsuperscript{192} Riksdagens ombudsmän (JO).
for Civil and Military Administration\textsuperscript{193} in Denmark and the Norwegian Parliamentary Ombudsman for Public Administration\textsuperscript{194}. The Ombudsmen typically focus their supervision on due process in the citizens’ contacts with the authorities and the application of administrative law in the process. As there are no strict boundaries between formal administrative law on due process for the claiming of social rights and material social law on the nature of social rights the Ombudsmen, when need be, also supervise the actual implementation of material social law. An Ombudsman typically initiates supervision on receiving complaints from private citizens, but may also initiate supervision independently. The respective parliaments may also charge their Ombudsman with specific oversight tasks, for instance in 1993 the Danish Ombudsman was tasked by the parliament with inspecting and reporting annually on disability accessibility in Danish society.\textsuperscript{195} The reports and remarks of the Ombudsmen are not comparable to the final decisions of a court, they cannot revise and change a decision made by an authority, and their decisions do not per se have the force of law. However, it is part of Nordic legal tradition to respect and observe the Ombudsmen’s conclusions and to use their reports as normative sources.\textsuperscript{196} In the field of social rights the Ombudsmen have the potential to be significant sources of law. However, the Ombudsmen are criticized for focusing too much on formalities, to the exclusion of material social rights. Kirsten Ketscher has noted, that if the Ombudsman institution is to continue to have a central place in matters of social law, it will be crucial for the Ombudsmen to move beyond purely formal administrative issues.\textsuperscript{197}

Securing the rights of the individual citizens does not necessarily conflict with the idea of municipal self-governance as the latter is primarily concerned with a more general prioritization of municipal tasks. But the two may compete in specific situations. Adverse or not, individual social rights and local self-governance frequently sit uneasily side by side in the Nordic welfare states. Whenever social rights are strengthened and social rights legislation is enacted, tension often increases between the national government and the local authorities, as does the tension between the priorities of local political establishments and the claims of individual citizens.\textsuperscript{198} Håkan Gustafsson has observed that even the normatively strongest legal rights also tend to weaken when implementation is left to local government. Without a forceful national

\begin{footnotes}
\textsuperscript{193} Folketingets Ombudsmand.
\textsuperscript{194} Sivilombudsmannen.
\textsuperscript{195} Folketingets Ombudsmand 2008, p 2.
\textsuperscript{196} See for example Graver 2007, p 638 f and Eklundh 2005, p 85 ff.
\textsuperscript{197} Ketscher 2008, p 175. See also Schultz 2004, p 132 ff.
\textsuperscript{198} See for example Vahlne Westerhäll 2004, p 85.
\end{footnotes}
supervision, the theoretical claim-right is transformed in practice into a non-right, subject to the municipal privilege of awarding social benefits only when it suits the budget.199

With the number of municipalities in the Nordic countries, all providers of important services and benefits, and exercising self-governance, certain problems surface regarding political and legal differentiation. One such problem is municipal noncompliance with the law. Noncompliance can manifest itself in many different ways, and can range from what could be described as disputes in good faith about the correct interpretation of the law, all the way to deliberate disregard of well-established statute or case law.200

Noncompliance can be considered more severe, and to infringe more on legality and Rechtsstaat principles of legal certainty and predictability, the clearer and less ambiguous the rights/duties nature of the relationship between the private individual and the respective municipality is understood to be.

2.2.3 Problems with Supervision of Municipalities – a Swedish Example

A troublesome problem, from the perspective of legality and social rights, arises when a private individual has a claim-right to a service or a benefit from a municipality, and having had the claim rejected by the municipality, obtains a decision from a court that affirms and upholds the claim, but the municipality, instead of then providing the service or the benefit in accordance with the court’s decision, maliciously decides to challenge the final order of the court.201 In Sweden this problem was much discussed in the mid-1990s – partly due to the new social rights granted in the Act on Support and Service to certain Impaired Persons202 which came into effect in 1994 – but also due to the political discourse and general retrenchment in the Swedish welfare state at that time.

The reasoning behind the illegal municipal challenges appears to have been rooted in peculiar understandings of law and municipal self-governance. As the realization of social rights incurs costs, representatives in some municipalities advocated that insofar as these costs were drawn from the

funds of the municipalities, this fact per se should make the social rights not claim-rights, as prescribed by statute law, but purely discretionary services or benefits granted by the municipality.\textsuperscript{203} Another argument voiced by those who supported illegal municipal challenges is that the rights per se were illegal – not the administrative failure to obey the court rulings.\textsuperscript{204} These arguments viewed the claim-rights awarded to citizens as encroaching on self-governance and local democracy as they reduced municipal discretion to govern solely according to the priorities of the municipal political and administrative leadership.

Such reasoning runs contrary to many fundamental principles of the \textit{Rechtsstaat} but is also illogical from the perspective of welfare state ideology. One major aspect of municipal self-governance is that the municipalities shall regulate their own financial situation. The Nordic municipalities do not only receive a substantial portion of their funding from the state, but also have the right to income taxation within their areas. An important rationale of self-governance is that the municipalities should take care of both the welfare of the community and the balance of the budget. An argument against individual social rights, based on the presumption that the municipalities can manage neither the social rights legislation nor the finances, can thereby logically only be an argument against municipal self-governance as such.

To assert that insufficient material resources can somehow reduce the legitimacy of a claim-right expressed in statute law is an untenable legal argument.\textsuperscript{205} For comparison, if the principles of private law can serve as a departure point when determining the strength of social rights, then they can also serve as a counterpoint to illegal municipal challenges.\textsuperscript{206} When a legal person (A) has a claim on another legal person (B) then person B cannot escape that claim by exercising discretion on his or her part or by counterclaiming that he or she simply does not have enough funds at his or her disposal. In such a case, every court would uphold A’s claim. The claim does not cease to exist just because person B finds it more financially or politically expedient not to honor it.

The problem of municipal challenges to the verdicts of the courts can then be divided into two sets of questions. First, how is the situation to be redressed from the perspective of the private individual who is the victim of a relinquishment of important principles of legal certainty and legal

\textsuperscript{203} Warnling-Nerup 1995, p 96 ff.
\textsuperscript{204} Gustafsson 2002, p 453.
\textsuperscript{205} See for example Eskeland 1986, p 296 ff.
\textsuperscript{206} Kjønstad & Syse 2006, p 98.
predictability? Second, how is the situation to be redressed from the perspective of the state, namely how are the specific illegalities of the respective municipalities to be rectified, thereby honoring the individuals’ claim-rights, but also how are such illegal challenges to be prevented from happening again? The Swedish state has employed a twofold strategy in addressing both sets of questions. In the Act on Support and Service to certain Impaired Persons, the state increased pressure on the municipalities regarding claim-rights. According to Section 28 a of the Act a municipality or a county that fails to honor a claim-right stated in the Act may be ordered to pay a special charge. From Sections 28 b – d of the Act it further follows that, if the illegal challenge of a court judgement continues, the special charge can be levied again and again, until the municipality or county complies. Regarding non-compliance and illegal challenges to the claim-rights concerning social security under the Social Services Act, the Swedish government has pursued a somewhat less forceful course. It is now generally possible under the Act to appeal every decision made by a municipality according to Chapter 16 Section 3. Further, from Chapter 4 Section 3 it follows that the claim on the municipality for certain needs-based social security is to be granted according to a national norm which lays down national standards for maintenance support. This national norm is updated on a yearly basis, following from Chapter 2 Section 1 of the Social Services Decree. The response of the Swedish state towards municipal noncompliance and illegal challenges can thus be said to have been a compromise of sorts; to somewhat curtail the self-governance of the municipalities without abolishing any of the fundamental principles. However, the social claim-rights have, arguably, thereby been ultimately strengthened and are more firmly established within Swedish social law. Accepting the municipal illegalities was clearly out of the question for the state, the judicial system and legal scholarship alike. The development can be construed as a reorientation of social law towards legal ethics and basic legal values and as a reaffirmation of social rights in the welfare state.

2.3 Disability Law and Policy in Sweden, Denmark and Norway

The situation for people with disabilities in the Nordic welfare states, as elsewhere in the world, was historically primarily seen from a medical

207 Gustafsson 2007.
perspective, closely associated with the actual physical or psychological impairments and specific functional conditions. Håkan Gustafsson describes how disability throughout history has been viewed as a frequently stigmatizing characteristic of the individual.\textsuperscript{210} From the 1970s onward an entirely different perspective gained ground. The environmentally relative view of disability fixed on the importance of the individual’s context in the emergence and existence of a disability. Disability was no longer seen as solely related to an individual but was instead understood as the difficulties encountered by the individual in everyday life, physically or mentally. Thus, disability arises in relation to the demands made by the surrounding environment on an individual and his or her functions; the disability is entirely related to the environment of the particular individual. This has the added consequence of making disability a decidedly political issue, as political decisions about the structure of society, be it the social or physical structure, can prevent an impairment from becoming a disability.\textsuperscript{211}

\subsection*{2.3.1 Disability Normalization – a Nordic Ideological Movement}

Normalization is to be found everywhere in Nordic disability law and disability policy from the late 1950s well into the 1990s. The normalization ideology, with integration at its core, had been developed within the disability movement and the efforts of this movement were a prerequisite for this view becoming firmly established within the population.\textsuperscript{212}

Normalization appeared first as a normative principle of ideology, manifesting the aspiration towards full integration and inclusiveness in society for people with intellectual disabilities, as such, normalization became important in legislation, government committees and preparatory works. First in Denmark and Sweden, and somewhat later in Norway, normalization and integration have long been central ideological principles.\textsuperscript{213} Normalization also appeared as a scientific idea, and an analytical tool for researchers, evaluating or delivering critiques of services and/or disability policies. By using normalization as a sort of ideological benchmark or standard, social scientists tried to measure how social services and policies would live up to the

\begin{thebibliography}{9}
\bibitem{210} Gustafsson 2002, p 259.
\bibitem{211} Socialstyrelsen 2006.
\bibitem{212} See for example Gunnarsson & Hollander 1990, p 19.
\bibitem{213} See for example Bengtsson & Kilskou Kristensen 2006, p 43 ff.
\end{thebibliography}
ideological goal of enabling people with intellectual disabilities to fully integrate into society.\textsuperscript{214}

Normalization as an ideology surfaced in the years after World War II. In 1946 the Swedish government committee on the partially able-bodied\textsuperscript{215} discussed how to provide support and assistance for those partially fit for work and recommended as a solution that the services of the new welfare state should be opened up and adapted to this group of people. This meant, at the time, that a new policy or approach to disability had to be developed whereby people with disabilities were seen as citizens with democratic rights who, as such, could claim to be included in the regular services of the welfare state operations. This approach raised the expectation that people with disabilities, by and through the operations of the welfare state, would be given the chance to live a normal life. This approach was thus termed the principle of normalization.\textsuperscript{216}

Normalization was primarily constructed around the idea of changing everyday life for people with intellectual disabilities living in government institutions. As such, normalization came with a normative set of ideas about what constituted a “normal” everyday life in society. The core of normalization was that people with intellectual disabilities should be emancipated and allowed to experience conditions and patterns of living as close as possible to those perceived to be prevalent in “normal” society. In the 1950s Bengt Nirje, from Sweden, listed eight elements of normal patterns of living, relevant to the principle of normalization:

1. A normal circadian rhythm
2. A normal weekly rhythm
3. A normal yearly rhythm
4. A normal life cycle
5. Normal self-determination
6. The normal patterns of sexuality in the community
7. The normal patterns of economy in the country

\textsuperscript{214} For an overview of the scientific use of normalization in Nordic scientific literature, see Bengtsson & Kilskov Kristensen 2006, p 43 ff.
\textsuperscript{215} SOU 1946:24.
\textsuperscript{216} Ericsson 2005, p 40.
8. The normal standards of environment in the society\textsuperscript{217}

Niels-Erik Bank-Mikkelsen, from Denmark, stressed that he did not wish to set out any particular standards for normalization, but that the intention, nevertheless, was to give people with intellectual disabilities the same conditions and opportunities as everyone else. If any difference existed between the ideas of Nirje and those of Bank-Mikkelsen, both of whom were important in developing the normalization principle in the Nordic countries, it was primarily one of tone rather than substance. Bank-Mikkelsen focused on normalization as a goal for society, and consequently made a distinction between normalization and integration. While normalization remains the goal, integration is a process that may facilitate the achievement of that goal. For Bank-Mikkelsen segregation was not necessarily an enemy of normalization, as long as the segregatory practice was necessitated by some special purpose. Nirje focused on normalization as a means and a method for influencing medical, psychological, social, political and educational practice. His focus was on the process of normalizing the environment and everyday activities. For him normalization was a process meant to reform the entire atmosphere surrounding people with intellectual disabilities and facilitating their individual emancipation and development.\textsuperscript{218}

Normalization as a societal goal and as a discourse of welfare state policy was well and alive until the 1980s. In Section 3 of the Swedish Special Services Act\textsuperscript{219} it was stated that the services under the Act should enable people with intellectual disabilities to live as others do and to live in community with other people. The idea was that people with intellectual disabilities would live their everyday lives under conditions that were as normal as possible, among other people in society. Shortly after the Special Services Act came into effect in 1986 normalization passed into oblivion. Normalization was scrapped in disability law and policy, and in disability research, during the late 1980s.\textsuperscript{220}

The entire field of social and disability law saw a reorientation towards ethics, morality and values in the 1990s.\textsuperscript{221} Normalization gave way to a more globalized approach to disability, with international human rights coming more into focus. In disability law and policy the so-called ethical perspective

\footnotesize
\textsuperscript{217} Nirje (ed) 2003, p 91 ff.
\textsuperscript{218} Bengtsson & Kilskou Kristensen 2006, p 44 f.
\textsuperscript{219} Lag (1985:568) om särskilda omsorger om psykiskt utvecklingsstörda m. fl.
\textsuperscript{220} Söder 2003, p 191 ff.
\textsuperscript{221} See for example Vahlne Westerhäll 2002, p 649.
signaled a shift of focus from integration and normalization towards self-determination, participation and equality.\textsuperscript{222}

Normalization, both as a societal goal and as a scientific standard, was directed towards societal, not individual, change. The principle was not to normalize the individual vis-à-vis the environment and the society but to adapt and adjust society in order to normalize the conditions of everyday life for people with intellectual disabilities. This, however, was one key aspect of normalization that was not always understood. Misconceptions that individuals, rather than society, were to be “normalized” might have contributed to the decline of normalization. Normalization also emanated from advocates for one specific group within the disability community, people with intellectual disabilities. Normalization, therefore, had ideological overtones which were hard to apply to the entire disability community.\textsuperscript{223}

With the adoption in the 1990s of the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, a forerunner to the UN Convention on the Rights of Persons with Disabilities, where normalization was not mentioned or referenced at all, the Nordic focus shifted decisively to a human rights perspective, and to matters concerning all those in society with disabilities.

The transformation from normalization to a human rights perspective is also connected with changes in the Nordic welfare states. Normalization as a concept was ideologically and chronologically connected with ideas of the great society, centralization and social engineering.\textsuperscript{224} The transformation reflects ambitions to create a more inclusive terminology, adapted to the modern Nordic welfare states, and ultimately to the UN Convention on the Rights of Persons with Disabilities.\textsuperscript{225}

The importance of the normalization ideological movement, means that disability law and policy in the Nordic welfare states after 1950 has a historical basis in the care and services provided for people with intellectual disabilities. The need for practical and legal solutions to organizing care and public services for people with intellectual disabilities has functioned as a driving force in extending the legal rights of all people with disabilities. This can be seen in the widening scope of disability law over several decades.\textsuperscript{226}

\begin{itemize}
\item \textsuperscript{222} SOU 1991:46, p 121 ff.
\item \textsuperscript{223} Söder 2003, p 191 ff.
\item \textsuperscript{224} Söder 2003, p 195 ff.
\item \textsuperscript{225} See for example Traustadóttir 2009, p 13 f and Ventegodt Liisberg 2011, p 19 ff.
\item \textsuperscript{226} Bengtsson 1997, p 133.
\end{itemize}
One driving force in Nordic disability law, fueled by the ideas of normalization, was deinstitutionalization; the process whereby the large nursing home institutions were abolished in favor of living in the community. The policy was aimed first at differentiation. The idea was to achieve better material conditions for residents with severe intellectual disabilities, living in nursing home institutions, while at the same time providing community-based services for people with milder intellectual disabilities, living outside the institutions. During the 1970s this policy realigned towards community living for all those with intellectual disabilities.\textsuperscript{227}

As normalization was embraced in the 1970s, an ideological break with administrative policies of differentiation occurred. The legislative work focused on social integration, allowing individuals to be able to lead their lives as if there were no impairment. But the focus was also on organizational integration; that the regular service providers in the community should include in their regular operations services for people with disabilities. A transformation in legislative and political approach occurred, away from special law providing for special services, special residences and special schools, towards universal law and mainstreaming.\textsuperscript{228}

Organizational integration, or mainstreaming, can also be described as administrative normalization or sector responsibility; that people with disabilities shall be included in the normal administrative structures and proceedings of the welfare state. Administrative normalization or sector responsibility relies on each sector in the society to include and integrate the needs of people with disabilities in their normal operations. Separate administrative structures for people with disabilities are to be avoided. Mainstreaming in this sense can be understood as macro-level normalization.\textsuperscript{229}

Sector responsibility, or mainstreaming, can be construed both as an instrumental method and as an ideological principle. As a method, it becomes the vehicle for achieving the legal principle of formal equal treatment. As an ideological principle it is, in and of itself, an expression of the legal principle of formal equal treatment.

\textsuperscript{227} See Mansell & Ericsson 1996, p 242.
\textsuperscript{228} Seip 1994, p 249.
\textsuperscript{229} Bengtsson 05:11, p 15 f.
2.3.2 Important Principles in Nordic Disability Law

People with disabilities have long occupied a special position within the law of the Nordic welfare states. The traditional medical view of disability can still be seen in the definition of commonly known and accepted types of disability such as visual, hearing, speech, mobility and intellectual impairments.

In Danish law and policy, the problem of whether the universal ambitions of the welfare state should extend to all people, including those with disabilities, has raised the question of whether it is in any way reasonable to define and separate people with disabilities from other citizens in society who are in need of support and service from the welfare state. In the preliminary stages of drafting the 1997 social reform it was suggested that disability as a legal definition in the field of social law should cease to exist. This suggestion was not, however, followed up. Disability is still a relevant criterion for inclusion in, and exclusion from, social rights in Denmark, just as in Norway and Sweden.

According to some legal scholars a well-defined disability group, with clear boundaries between people with disabilities and the rest of the citizenry, strengthens the social rights of the former. This is supposedly due to the legitimizing effects among the rest of the citizenry as the perception exists that a clearly defined and demarcated disability group reduces the risk of abuse of social rights by citizens not deemed worthy of those rights. This kind of reasoning has met with much criticism from scholars in disability law. Life itself, not least in the form of human ageing, poses a permanent and complicated challenge to boundary setting. Everyone becomes more or less weaker and less able-bodied with increasing age. As the years go by, the entire citizenry could potentially be disabled in the eyes of the welfare state. Social law in the Nordic countries typically does not view elderly people as disabled per se, but they can be classified as disabled if they meet certain legal criteria, for example regarding visual or hearing impairment. However, a number of social rights apply only to people with disabilities under the general retirement age.

Kirsten Ketscher has identified six important legal principles concerning disability in the law of the welfare state. The equal treatment principle, like

---

230 See for example Hollander 1995.
231 Ketscher 2008, p 141.
232 See for example Ketscher 2008, p 141.
233 See for example Sahlin 2012, p 23 f.
234 Ketscher 2008, p 144 f.
the general anti-discrimination principle, is closely related to a general principle of equal treatment in administrative law. The idea is that people with disabilities are to be treated equally, as compared to others, unless specific conditions are met which determine otherwise. This indicates the very basic and passive character of this legal principle. The active party, usually a public authority, is not forced to take any positive measures. It is a purely negative anti-discrimination principle.

The integration principle basically states that a private individual with an impairment shall be part of the community. The idea behind compensation is that society has a responsibility to compensate for impairments which cause problems that negatively affect the quality of life. Such compensation can be given as benefits in cash or kind, assistive technologies, care or services etc. Compensation often facilitates equal treatment and integration, but is a separate legal principle in that its objective is to achieve an improved quality of life. The compensation is to be specifically aimed at ameliorating the consequences of the impairment for the individual.

---

235 Ketscher 2008, p 147.
236 Ketscher 2008, p 154 f.
239 Lindqvist 2007, p 81.
240 See for example Schultz 2004, p 317.
241 See for example NOU 2001:22, p 46.
private individual must also be substantive and not available to all citizens; otherwise there is hardly any compensation.

At the core of the protection principle is the ancient idea of bonus pater familias.\footnote{Ketscher 2008, p 149 ff.} When a private individual cannot exercise self-determination it is necessary for someone else to assume that role and exercise guardianship. This guideline is naturally very paternalistic in character. A traditional effect of paternalism and lack of self-determination is to view disability as a deviation from normality. With this view, private individuals often become isolated from the community and thus not considered citizens with the same rights and duties as other members of the community. For people with intellectual or psychological disabilities the protection principle still poses problems.\footnote{Syse 2012b, p 278 ff.} It is sometimes assumed, for example, that it is in the best interest of persons with psychological disabilities to set aside self-determination in order to establish them in a position in the community from which they can best exercise and make use of the other social rights and entitlements offered by modern welfare states.\footnote{See for example Lövgren 2013.}

The dignity and integrity principle applies specifically to the field of disability law, as people with disabilities often find themselves in vulnerable situations in everyday life.\footnote{Ketscher 2008, p 153.} This legal principle mirrors Article 17 in the UN Convention on the Rights of Persons with Disabilities. Individual autonomy is closely linked to ideas that personal integrity is to be protected so as to reinforce the possibilities of leading an independent life.\footnote{Syse 2012b, p 279 ff.} For people with disabilities, dignity and integrity are closely connected with their possibilities of exercising personal autonomy in everyday life.

### 2.3.3 Compensation and Mainstreaming from an Everyday Life Perspective

Within the intersecting fields of social and disability law the application of legal principles is not necessarily uncomplicated, and the various principles may also come into conflict with each other. The compensation principle, for example, does not always go well together with the sector responsibility...
principle. From an everyday life perspective the compensation principle and the sector responsibility principle work quite differently in the welfare state.

Mainstreaming of the transport sector and sector responsibility in general public transport are hugely important matters for people with disabilities.\textsuperscript{247} The transport provisions examined in this thesis, however, are more or less specifically designed for those people who cannot use general public transport. This means that the provisions are ideologically motivated and guided primarily by the compensation principle.

The compensation principle goes hand in hand with control of people.\textsuperscript{248} A disabled person who applies for services or benefits will have their individual need determined by legal and medical criteria, and sometimes also by other criteria. Evaluation, screening and judgment of the individual’s need, and whether this individual need is sufficient to meet various criteria, are carried out by public authorities. In the operations of the welfare state the logic tends to be that the more compensation required – the greater the control of the disabled person.\textsuperscript{249} And the greater the control – the more the principles of dignity, integrity and autonomy might be set aside.

In contrast, sector responsibility requires no control of persons, but instead requires control and supervision of public authorities. With increased mainstreaming, the sector responsibility principle requires control and supervision also of private corporations catering to the public.\textsuperscript{250} Sector responsibility and mainstreaming tend to open up society to the individual, while compensation tends to open up the private life of the individual to control by society. Thus, if the equal treatment principle and the integration principle are to maintain their position as important principles in disability law in the modern welfare state, then it follows as a necessary prerequisite that mainstreaming and sector responsibility must also be important principles for the operations of the public administration.

\textsuperscript{247} See for example Lawson & Matthews 2005.
\textsuperscript{248} See for example Bengtsson, Storgaard Bonfils & Olsen 2008, p 42.
\textsuperscript{249} Lindberg & Grönvik 2011, p 93 ff.
\textsuperscript{250} See for example Prop 1999/2000:79, p 37 ff.
3 Development of Law and Policy for People with Disabilities in Sweden, Denmark and Norway

The development of disability law and policy in all three countries is mainly a history of an increasing focus on universalism and mainstreaming. There is a historical starting point in social policy. Gradually, provisions and services for people with disabilities have been mainstreamed into other sectors of society. What is consistent and typically Nordic in this historical development is that universal provisions are given preference over targeted provisions. In this way, special disability provisions have become a complement and a support added to universal provisions aimed at the general public.251

3.1 Sweden – Universalism with Exceptions

From the very beginning of the welfare state era in Sweden, the counties and the municipalities were considered universally responsible for the welfare and social wellbeing of all inhabitants within their respective areas. The responsibilities were particularly centered on care and services for the elderly and the disabled. The services included social support, various vocational rehabilitation measures and medical care. In the decades immediately after the World War II various measures for people with disabilities was undertaken based on, for example, the Act on Municipal Social Register252, the Social Support Act253, the Child Services Act254, the Act on Municipal Social Central Committee255 and the Child Daycare Act256. Most of this type of social legislation was unified in the 1980 Social Services Act257 which came into force in January 1982. Under the 1980 Social Services Act, the municipalities were tasked with systematically providing various forms of social support in everyday life to all who had a need, including for example home services and special residences for people with disabilities.

251 See for example Nordens Välfärdscenter 2013, p 6.
252 Lag (1936:56) om socialregister.
253 Lag (1956:2) om socialhjälp.
254 Barnavårdslag (1960:97).
255 Lag (1970:296) om socialcentralnämnd m m.
256 Lag (1976:381) om barnomsorg.
People with intellectual disabilities had long followed a special track in Swedish social welfare legislation and policy. The first Swedish special legislation concerning people with intellectual disabilities was passed in 1944.\textsuperscript{258} Entirely new acts were passed in the years 1954, 1967 and 1985 respectively. The Act of 1944 included only one specific group of people with intellectual disabilities, the so-called educable mentally deficient\textsuperscript{259}. The law introduced compulsory school attendance for this group and also introduced some vocational education for people up to 21 years of age. Responsibility for the implementation rested with the county councils overseen by the Swedish Board of Education.\textsuperscript{260}

Ten years later the Act of 1954\textsuperscript{261} came into force. This Act was aimed at a broader, more widely defined group of people with intellectual disabilities. It was decided that the county councils were responsible for the care of everyone with so-called general mental retardation\textsuperscript{262}, including those previously deemed uneducable. However, certain exceptions were made for cases that were considered particularly complicated and expensive. Generally the Act of 1954, compared with the Act of 1944, was more comprehensive. Examination of the mental development for each individual became mandatory. Proceedings on registration in, and discharge from, the county services were formalized and the National Board of Health and Welfare now also exercised oversight.

In 1967 the legislation for people with intellectual disabilities was again subject to a major overhaul.\textsuperscript{263} A government commission\textsuperscript{264} proposed developmentally suppressed\textsuperscript{265} as the new designation for the group of eligible people under the Act, but the Swedish parliament eventually decided instead on the designation developmentally retarded\textsuperscript{266}. The Act of 1967 was more inclusive and, for example, applied to people with intellectual disabilities caused by disease or environmental factors where the earlier Acts had only included those with disorders in the central nervous system. The new Act included all individuals with intellectual disabilities who were in need of care and services not available through any other legislation, such as school or health care legislation. During the legislative process for the 1967 Act, the

\textsuperscript{258} Lag (1944:477) om undervisning och vård av bildbara sinnesslöa.
\textsuperscript{259} “Bildbara sinnesslöa” in Swedish.
\textsuperscript{260} Gunnarsson & Hollander 1990, p 14 f.
\textsuperscript{261} Lag (1954:483) om undervisning och vård av vissa psykiskt efterblivna.
\textsuperscript{262} “Allmän psykisk efterblivenhet” in Swedish.
\textsuperscript{263} Lag (1967:940) angående omsorger om vissa psykiskt utvecklingsstörda.
\textsuperscript{264} SOU 1966:9.
\textsuperscript{265} “Utvecklingshåmmad” in Swedish.
\textsuperscript{266} “Utvecklingsstörd” in Swedish.
environmentally-related view of disability came to be articulated as the model for Swedish disability law and policy. The Act aspired to create flexible services where diversity in available choices would enable every individual with intellectual disabilities to receive the services necessary. Special consideration was given to Rechtsstaat values; in accordance with the ideals of disability normalization, the services should not be allowed to curtail the liberties of the individual more than was absolutely necessary.267

In the three Acts, from 1944, 1954 and 1967 respectively, the citizenship rights of people with intellectual disabilities were, generally, marginalized at best. The overall idea in both 1944 and 1954 was not social integration but rather to protect society from these people. The solution to society’s problem was compulsory care for people with intellectual disabilities. However, in effect this care and education, albeit compulsory, successively strengthened their citizenship rights.268

The next major overhaul of law concerning people with intellectual disabilities occurred in 1985 and resulted in the Special Services Act269 which came into force in 1986. The scope of the new Act was broader and even more inclusive than previous legislation. The Special Services Act and the services it mandated were aimed at three specific categories of people:

- people who were mentally retarded, that is, people with intellectual disabilities, all of whom were previously included in the Act of 1967
- people with intellectual impairment after brain damage sustained in adulthood, the impairment of the brain being caused by external force or a physical illness
- people with child psychosis, that is, what is today known as autism or conditions resembling autism

Both the second and the third categories were characterized by the special needs of these individuals, and also by the understanding that those needs were similar in nature to the needs of everyone with intellectual disabilities. As with the previous Act, the responsibility for implementation rested with the local authorities in general and the county councils in particular.

---

267 Gunnarsson & Hollander 1990, p 17 f.
268 See for example Lewin 1998, p 45.
269 Lag (1985:568) om särskilda omsorger om psykiskt utvecklingsstörda m fl.
Under the Special Services Act the legal position of the individuals, in relation to the public authorities, was strengthened as the new Act featured claim-rights for those who were eligible. People claiming services were given the right to administrative appeal if they were not satisfied with a decision. The Act featured new ideological citizenship values regarding the desired nature of the relationship between the public and the individuals with intellectual disabilities. Section 3 of the Act stated that services under the Act should be founded upon respect for the right to self-determination and the privacy of the individual. Section 5 stated that the services under the Act should be designed so as to strengthen the ability of the individual to lead an independent life, and that by and through the services under the Act, private individuals should be ensured good conditions of life.

In 1989 the Swedish Government Commission on Disability was set up with the task of investigating how the social services, habilitation and rehabilitation related to the needs of people with severe impairments. The task was successively broadened as several additional directives were issued. Among other tasks the committee was commissioned to investigate certain questions regarding education for young people with disabilities. In one additional directive from the government, quite extraordinary in character, the committee was freed from the usual budgetary limitations. Thus, the committee was allowed great leeway in suggesting improvements for people with disabilities and was not required to specify how the committee’s proposals were to be financed. The Government Commission on Disability was able to oversee a comprehensive exposition of the situation for people with disabilities and came to function largely as a think tank and an inspiration for reform in Swedish disability law and policy.

In several committee reports the Government Commission on Disability exposed large gaps in the public support system for people with disabilities. Gaps regarding the scope and the aim of the services and support systems and gaps in self-determination; many individuals could not sufficiently influence their service and, accordingly, had problems planning and leading independent lives. Regional differences were also pointed out; the service and support system differed depending on where an individual resided, with the regional and local authorities having varying degrees of ambition. It was also pointed out that there were differences in levels of support and quality of services between different groups of people with disabilities where certain groups fared better than other. In surveying the Swedish disability

---

272 Bengtsson 2005, p 74 f.
landscape the Government Commission on Disability also stressed integration of the labor market as being of paramount importance for achieving equal participation in society. The Commission specifically pointed to active participation on the labor market not only as a means for the individual to earn a living, but also as a means to achieve basic human needs for community, development and a sense of purpose.\textsuperscript{273}

The employment situation for people with disabilities was not particularly good during the period of the surveys in the early 1990s. The Commission reported, in an interview study, that people with disabilities of working age described their chances of getting a regular salaried job as rather remote. Many people with disabilities were not even registered as unemployed, and were thus invisible in unemployment statistics.\textsuperscript{274}

The Commission eventually proposed a new comprehensive disability rights act concerning social services.\textsuperscript{275} This idea won the approval of the national government and was enacted and implemented in the 1990s. The Act on Support and Service to certain Impaired Persons took effect 1994. Closely connected with this Act was the Assistance Benefit Act\textsuperscript{276} which regulated the financial responsibilities of the municipalities and the national government towards any person entitled to personal assistance under Section 9 of the Act on Support and Service to certain Impaired Persons. The Special Services Act from 1985, which the new Act replaced, served as a kind of role model when drafting the new Act, especially with regard to specific claim-rights.\textsuperscript{277}

The new Act was considered another step towards a broader, and more inclusive, scope for social services law for people with disabilities. As outlined in Section 1, the Act on Support and Service to certain Impaired Persons contains provisions for special support and service for three specific categories of people:

1. Those who have an intellectual disability, are autistic or have a condition resembling autism
2. Those who have a considerable and permanent, intellectual functional impairment after brain damage sustained in adulthood, the impairment being caused by external force or a physical illness

\textsuperscript{273} SOU 1991:46, p 297.  
\textsuperscript{274} SOU 1990:19, p 76 ff and SOU 1992:52, p 297.  
\textsuperscript{276} Lag (1993:389) om assistansersättning.  
\textsuperscript{277} Hollander 1995, p 13.
3. Those who have some other lasting physical or mental functional impairments which are manifestly not due to normal ageing, if these impairments are major and cause considerable difficulties in everyday life and, consequently, an extensive need for support or service

The two first groups of people encompass all those within the scope of the Act of 1985. The third group was new and signaled stronger universal ambitions for those with major impairments.

Although certain phrasings were altered and modernized, with regard to the first two groups, no specific changes in scope were intended. For example, where the old Act spoke of childhood psychosis the Act on Support and Service to certain Impaired Persons instead mentions autism and conditions resembling autism. Autism and intellectual disabilities are also conflated in the new Act as these disabilities usually surface early in life, in most cases before the child is three years old, and almost always come with impairments which last during the entire life span of the individual.²⁷⁸

The third group encompassed by the new Act is categorized according to several cumulative prerequisites. Lasting physical or mental functional impairments is meant to demonstrate that the impairment must not be of an incidental or temporary nature. The cause or nature of the impairment is not, however, relevant. Impairments which are major and cause considerable difficulties in everyday life, are those in which the disability simultaneously and severely affects several important aspects of the everyday life of the person, for example that they are unable to manage their personal finances or have problems communicating with others. Extensive need for support or service covers both quantitative and qualitative aspects of the support and/or services needed. The need can be extensive because the person requires the support or service on a daily basis but it can also be extensive in the sense that the support or service is of a very specific nature, albeit for a limited period of time, for example when a person needs the support of highly trained professional staff.²⁷⁹

Section 4 of the Act states that the Act does not constitute any infringement of the rights which a private individual may have by virtue of any other act but is an addition to any other legislation that may grant a social right or entitlement to a person. Section 4 is primarily to be understood in relation to the need-based framework rights of the Social Services Act which, at least theoretically, could offer the very same services as the Act on Support and Service to certain

Impaired Persons to a broader group of people, though with a considerably weaker and more unspecified claim rights for the individual.

There are some indications that the formally strong individual rights of the Act Concerning Support and Services for Persons with Certain Functional Impairments works better for certain disability groups, such as people with intellectual impairments, than for others, for example people with psychological or psychiatric impairments, who are more or less excluded from entitlements under the Act.\footnote{Bengtsson & Åström 2005, p 302 f.} Only a fraction of those people with psychological disabilities receive support or services under the Act as compared to what was envisioned when it was passed. Many people with psychological disabilities, for example, are not considered to meet the prerequisite that the disability must cause considerable difficulties in everyday life. In addition, services which might be expected to be very important for the everyday life of people with psychological disabilities, such as specially adapted residential support, are simply not available under the Act.\footnote{Printz 2004, p 54 ff.}

Chapter 5 Section 7 of the Social Services Act states that people who, for physical, mental or other reasons, encounter difficulties in their everyday lives must be enabled to participate in the life of the community and to live as others do. The social services are to help to ensure that the individual has a meaningful occupation and is housed in a manner appropriate to their need for special support. While inclusion under the Act on Support and Service to certain Impaired Persons is entirely dependent on the specific criteria of eligibility in one of the three categories, the Social Services Act instead offers broader inclusion, based on need.

Although the rhetoric when drafting the Act on Support and Service to certain Impaired Persons was universalistic, the Act itself is characterized by the historical and contextual focus on people with intellectual disabilities, and the ideological heritage of disability normalization and deinstitutionalization. The focus of disability research and political attention on people with intellectual disabilities during the later 20\textsuperscript{th} century has had important effects on the perception of the entire field of disability law and disability policy in Sweden. There are relatively few people with intellectual disabilities, within the very diverse group which can be labeled as people with disabilities.\footnote{See for example Skr 2005/06:110, p 31 and Socialstyrelsen 2007, p 26.}
3.2 Denmark – from Nationalization to Decentralization

In early 20th century Denmark, people with disabilities were covered by poor relief law which, among many other things, meant that they were disfranchised and lacked the status and ability to marry. Successively however, different groups of people with disabilities became exempt from these legal consequences. The Danish social policy reform in 1933 marked the beginning of extended social ambition in the field of disability. With legislation in connection with the reform, the Public Care Act of 1933283 and the Act on Measures Regarding the Mentally Deficient284 the Danish government took on responsibilities and established institutions for several groups of people with disabilities. The persons who were the focus for these provisions were those with mental illnesses, the mentally retarded, people with epilepsy, physical and communicative disabilities, for example people with impaired hearing and vision. The main effort was aimed at the first two groups who were mainly placed in private nursing home institutions. Among the motives behind the extended social ambitions were modern democratic ideas about a society founded on science and social justice, but also on eugenic ideas of the time, specifically on limiting the spread of bad genes in the population.285

In the field of public care and services for people with disabilities the Public Care Act of 1933 was successively supplemented with special legislation for different groups, such as for deaf people in 1950 and for blind and visually impaired people in 1956.286 In 1959 special legislation for people with intellectual disabilities, the Act on the Mentally Deficient287, came into effect. This signified greater national responsibility for this group. The private nursing home institutions for people with intellectual disabilities became part of a program run by the national government. The Act of 1959 was largely inspired by the new ideas about disability normalization, and the ambition was to create as normal everyday lives as possible for people with intellectual disabilities, regardless of their residence, inside or outside national nursing home institutions. The last of the legal consequences stemming from the poor relief were eliminated in 1961 and were replaced by more modern social legislation.288

283 Lov nr 181 af 20/5/1933 om offentlig forsorg.
284 Lov nr 171 af 16/5/1934 om foranstaltninger vedrørende åndssvage.
287 Lov nr 192 af 5/6/1959 om forsorgen for åndssvage og andre særligt svagtbegavede.
In 1970 the national nursing home institution program was further centralized and the now defunct National Board of Social Welfare\textsuperscript{289} was created. The Board ran a wide array of national welfare programs, not only the nursing homes but also, for example, the national child care program.\textsuperscript{290} In Denmark the special care and services\textsuperscript{291} for people with intellectual disabilities included two major groups, the so-called mentally deficient and people considered to be suffering from mental illness. The special care and services also catered for several minor groups of people with disabilities, including some people with physical impairments and people with multiple impairments. In 1976, with the onset of deinstitutionalization, the special care and services for people with mental illness were separated and transferred to the national health and medical services.\textsuperscript{292}

In the 1970s social reform initiatives drew on ideas of welfare state responsibilities for the social wellbeing of all citizens and, more specifically for people with disabilities, on ideas of normalization. Normality was understood to include participation in social life, with regard to such things as work, education, residence and leisure activities. Municipal administrative reform during the 1970s formed the basis for implementing the ideas of normalization in the form of a practical disability policy and created the rationale for transferring major social responsibilities for people with disabilities from the national government to the counties and the municipalities.\textsuperscript{293} The decentralization of the national nursing home institutions for people with intellectual disabilities and the decentralization of services for all people with disabilities have been hailed as signal events in Danish disability policy in the 20\textsuperscript{th} century. The decentralization was part of a purely administrative reform within the framework of the Danish welfare state. With the Decentralization Act\textsuperscript{294} the responsibilities for both the nursing home institutions and for special services for people with disabilities in general, were transferred from the national government to the Danish counties. This change in administrative responsibility also became a significant catalyst for reform of the nursing homes and the special services themselves. The process of deinstitutionalization took off, and the large nursing home institutions, created in the late 19\textsuperscript{th} and early 20\textsuperscript{th} centuries, sometimes with several hundred inhabitants in one institution alone, gave way to small-scale residences integrated into normal community residential

\textsuperscript{289} Socialstyrelsen.
\textsuperscript{290} Bengtsson & Kilskou Kristensen 2006, p 20.
\textsuperscript{291} “Særforsorgen” in Danish.
\textsuperscript{292} Bengtsson & Kilskou Kristensen 2006, p 12.
\textsuperscript{293} Storgaard Bonfils 2003, p 21.
\textsuperscript{294} Lov nr 257 af 8/6/1978 om udlægning af åndssvageforsorgen og den øvrige særforsorg mv.
areas. In Denmark the overhaul more or less immediately affected not only the services for people with intellectual disabilities, which was also the case in Sweden and Norway, but focused on the entire scope of public service and support aimed at all people with disabilities in society.\textsuperscript{295}

The unified Social Benefits Act\textsuperscript{296} which came into effect in 1976 added to the ideas of decentralization and administrative normalization. The Social Benefits Act, which replaced much of the earlier special legislation, ensured that people with disabilities received support and services from the same public authorities, and under the same regulations, as everybody else, when in need of social support or social security. The counties and municipalities, which became primarily responsible for the social welfare programs for all citizens, now also had primary responsibility for the nursing home institutions and special services for people with disabilities. The decentralization efforts from the 1970s onwards had a big impact on the institutional structure of the entire field of Danish disability policy. In conjunction with the reform a national government advisory body, the Danish Disability Council\textsuperscript{297}, was founded in 1980. This is a government funded body, and still operates under Section 87 of the Act on Legal Protection and Administration in Social Matters\textsuperscript{298}. The Council comprises representatives from the disability community and public authorities. It is primarily an advisory body, but also takes initiatives and proposes changes in disability policy, and central authorities are supposed to heed the Council’s advice in these matters. Since 1980 the Council has promoted implementation of sector responsibility and mainstreaming among public authorities.\textsuperscript{299}

In the late 1990s there was major administrative and legal reform in the field of Danish social law. The old Social Benefits Act was replaced with new Acts which came into effect in 1998; among them the Social Services Act\textsuperscript{300} and the Active Social Policy Act\textsuperscript{301} respectively. The new Social Services Act erased every reference to nursing home institutions and suchlike. From a normative perspective, decentralization, mainstreaming and sector responsibility were then fully implemented in Danish disability law. The government pointed out in the preparatory works that the group of people included under the new Social Services Act was still very broad and comprehensive. The government

\textsuperscript{295} Bengtsson & Kilskou Kristensen 2006, p 11 and p 17.
\textsuperscript{296} Lov nr 333 af 19/6/1974 om social bistand.
\textsuperscript{297} Det Centrale Handicapråd.
\textsuperscript{298} Bekendtgørelse af lov nr 983 af 8/8/2013 om retssikkerhed og administration på det sociale område.
\textsuperscript{299} See for example Bengtsson & Kilskou Kristensen 2006, p 14 f and p 28, Det Centrale Handicapråd (website) and Bengtsson, Bonfils Storgaard & Olsen 2008, p 33 ff.
\textsuperscript{300} Lov nr 454 af 10/6/1997 om social service.
\textsuperscript{301} Lov nr 455 af 10/6/1997 om aktiv socialpolitik.
stated that when the old Social Benefits Act was introduced, it was progressive, in that all citizens with social problems could get assistance under the same Act. The objective was to ensure a more positive attitude towards weak and exposed groups. The universalistic scope of that Act led, however, to exposed groups often having difficulties in making their views known and have not always been given the attention which they could properly demand. One idea behind the reformed social legislation was to focus on these groups, including many people with disabilities. This was to be accomplished by stricter legal criteria for eligibility. The government stated that the new Social Services Act describes the groups more exactly through a clearer definition of who were the targets of the individual benefit. Nevertheless, the social welfare provisions should be understood to be comprehensive and focused on the private individual’s situation and possibilities.  

With the new Social Services Act not only eligibility criteria, but also the content of the services and benefits, were described in a more explicit and specific manner, giving the language of the new Act somewhat more of an individual claim-rights character, though without abandoning the general framework law structure, and keeping universal needs-based criteria in several instances. Despite its main focus on services, the Social Services Act also contains a number of cash benefits for people with disabilities. As a general rule most of these benefits have needs-based criteria and are not means-tested. Such benefits include, for example, support for assistive technology, residential adaptation and car allowance. The new Act also, for example, introduced statutory escort services, for a limited number of hours per month, for certain people with disabilities aged between 16 and 67 years.

This shift in Danish social law has been described as a shift towards a more judicial view of social welfare, with a transition from an emphasis on goal-oriented material outcomes to one on Rechtsstaat values and formal legal predictability. Danish disability research indicates that a significantly larger number of people with disabilities were satisfied with the municipal decisions about their applications for residential services in 2006 compared to 1995, immediately before the new Act. The services were also considered to be better coordinated in 2006 than before. On the other hand, people with disabilities are much more dissatisfied with municipal procedures and municipal decisions about their social rights than those without disabilities. People with disabilities often feel that the municipal procedures for handling applications regarding various benefits or services take an unduly long time,

---

302 LFF 1997-04-16 nr 229.
303 See for example Wennberg 2008, p 101.
304 Bengtsson 2008, p 204.
and the information about social rights is inadequate. Further, the more severe the individual’s impairment the more dissatisfied that individual is with the municipal procedures and decisions.\textsuperscript{305} The shift can be understood as an individualization insofar as the private individual is constructed as having an active relation with the legal rights, that is, active negotiation and claiming on behalf of the private individual is both expected and is becoming more important in realizing social rights.\textsuperscript{306} The shift has also been understood to show that individual duties are becoming more important while individual rights are becoming less important. This understanding is closely connected with the development in social security law, for example regarding unemployment benefits. According to these observations, the development in Danish social law indicates a shift from a focus on equality of outcome to a focus on equality of opportunities.\textsuperscript{307}

### 3.3 Norway – from Differentiation to Unification

Compared with Sweden and Denmark, Norway had a somewhat slow start in modernizing disability law and policy during the 20\textsuperscript{th} century. During the first half of the century no great social ambitions on the part of the national government were evident in law. Throughout the second half of the 20\textsuperscript{th} century the Norwegian welfare state steadily increased its legal scope and superseded the legal and social responsibilities of families and relatives of people in need.\textsuperscript{308}

The Committee on Social Legislation in the mid-1930s had the task of facilitating expansion of public responsibilities and coordinating administration and legislation in the entire field of social policy. This led, among other things, to the 1936 Act on Aid to the Blind and the Crippled\textsuperscript{309}. This Act created disability pensions for the two groups mentioned in its title. The pensions were subjected to comprehensive means-testing. Not only the means and income of the disabled person, but also those of the disabled person’s family and relatives were taken into account. Only people considered to be blind or crippled, and entirely helpless, were entitled to pensions under the Act, and only the entirely helpless below 65 years of age. The exclusion of people over 65 years was justified by the state of the public finances. It was

\begin{footnotes}
\textsuperscript{305} Bengtsson 2008, p 23.
\textsuperscript{306} Wennberg 2008, p 101.
\textsuperscript{307} Hornemann Møller 2007, p 104.
\textsuperscript{308} See for example Kjønstad, Bernt, Kjellevold & Hove 2003, p 19.
\textsuperscript{309} Lov 16 juli 1936 om hjelp til blinde og vanføre.
\end{footnotes}
not considered fiscally responsible to give aid to everyone who became visually impaired with age. Many people with disabilities who were excluded from pensions had to rely on their families or relatives, or eventually the municipal poor relief system in order to eke out a living. Many people with mobility impairments lived in special shelters for homeless and helpless cripples.\textsuperscript{310} The situation was similar for people with intellectual disabilities. Many were subjected to the municipal poor relief system. Others were cared for in asylums or mental hospitals, or privately in families, sometimes under the auspices of a nearby mental hospital. Children in such institutions had no right to education but those with other types of disabilities were often sent away from their families to various special schools.\textsuperscript{311}

In 1950 the first steps were taken to coordinate care and services for people with intellectual disabilities. In a new Act on Nursing Homes which Receive Mentally Retarded People for Care, Protection and Education\textsuperscript{312} the national government assumed fiscal responsibility for the care for people with intellectual disabilities. The Act did not directly regulate the content or quality of the care but dealt with the fiscal and administrative responsibilities. No rights or entitlements to care or benefits were bestowed on individuals. For twenty years the Act was the main regulation concerning nursing home institutions. As a result of the Act, the number of nursing home institutions for people with intellectual disabilities increased during the 1950s and 1960s, often in joint ventures between the national government and private associations. The cooperation between the public authorities and the private parties was formalized in 1951 with the creation of a cooperation council for matters relating to the mentally retarded. Expansion of the nursing home institutions continued until the mid-1970s. After that time the focus shifted from quantitative expansion to qualitative improvement. The staff increased in number and the ideas of disability normalization, for example integration into the community, began to make an impact in the everyday operations.\textsuperscript{313} With the Hospital Act of 1969\textsuperscript{314} the public and private partnerships were brought to an end. The Norwegian counties were charged with the full responsibility for planning, building and operating the nursing home institutions. The principle of comprehensive public responsibility for the care and services for people with intellectual disabilities was firmly established from then on.\textsuperscript{315}

\textsuperscript{310} NOU 2001:22, p 36 ff.
\textsuperscript{311} NOU 2001:22, p 39.
\textsuperscript{312} Lov 28 juli 1949 om hjem som mottar åndssvake til pleie, vern og opplæring.
\textsuperscript{313} See for example Syse 1996, p 79 ff.
\textsuperscript{314} Lov 19 juni 1969 nr 57 om sykehus m v.
\textsuperscript{315} Seip 1994, p 280.
The situation for a given person with an impairment was heavily dependent on the character and medical nature of the impairment. Until the 1960s the public authorities’ approach to people with disabilities was differentiated and lacked both coordination and a comprehensive ideology. Many of the services and programs were developed in specialized environments, such as nursing home institutions or special schools. Many people with disabilities did not have any access at all to support or services. Instead poor relief, with all the stigmatization that comes with it, often influenced the entire lifespan of many people with disabilities.316

In the 1845 poor relief legislation, care for people with disabilities without relatives to provide for them, became the responsibility of the municipal poor relief system. The legislation was changed in 1900 and underwent further changes in the first half of the 20th century without altering the fundamentals concerning people with disabilities. It was not until 1964 that Norway got its first modern social legislation, the Social Care Act317. The new Act was constructed on modern welfare state principles which were new in Norwegian law. Important among these principles was that economic support from the public authorities for an individual in need was constructed as a legal entitlement, whereas such support in earlier legislation had been considered poor relief, a societal charity rather than a social right. Another new and important principle was that adult children no longer had the primary responsibility to care and provide for their elderly or disabled parents. Likewise, parents no longer had the primary responsibility to care and provide for their adult disabled children. In earlier legislation mutual and reciprocal responsibility between the generations, to care and provide for each other, had been the norm.318

Education for children with disabilities in Norway offered a compelling example of segregation. The Elementary School Acts319 in 1936 signaled the start of a huge segregationist undertaking. Children with disabilities were viewed as deviating from normality, and the solution was to segregate their education. The elementary school was closed to both children with disabilities and those with learning difficulties, social problems in the family etc. These children were segregated into special schools or special help classes. One objective was to protect the normal children from exposure to undesirable elements and social problems. Only with the onset of disability normalization

317 Lov 5 juni 1964 nr 2 om sosial omsorg.
319 Lov 16 juli 1936 nr 9 om folkeskolen i kjøpstædene and Lov 16 juli 1936 nr 8 om folkeskolen på landet.
were the segregationist ideas successively abandoned and a transformative process towards integration and universalism began.\textsuperscript{320} As in Sweden and Denmark, the ideas about disability normalization were first mooted in the 1950s, won professional and political terrain in the 1960s, and were ultimately universally embraced in the 1970s.\textsuperscript{321}

As the ideas of disability normalization, integration and mainstreaming took hold, the disability policy in Norway changed considerably. In the 1970s the idea that provisions and services for people with disabilities should, as far as possible, be established in the community and not in an institutionalized or professionalized environment, gradually gained ground. The normal service and support systems of society should also bear full responsibility for such service and support to citizens with disabilities. Special aid, special care and special service should be integrated into the general service and support systems of society, and not be established outside the mainstream.\textsuperscript{322}

Mainstreaming also meant that people with disabilities would be integrated with each other. Where for instance special residences and special institutions were still necessary, people with all kinds of disabilities would mix together. The aim was to get rid of the special institutions that only catered to certain groups, or sub-groups, in the disability community. The central idea was that the reforms and the legislative work should move beyond earlier categorizations, based on the specific nature of various impairments. In effect all the people with disabilities were brought together in increasingly universalistic legislation. For example, in 1975 the regulations on special schools for children with disabilities were included into the universal compulsory school legislation.\textsuperscript{323}

In January 1993 the Social Services Act\textsuperscript{324} came into effect and replaced the old Social Care Act from 1964. Section 1 of the new Act stated that its purpose was to promote financial and social security, to improve the living conditions of disadvantaged persons, to contribute to greater equality of human worth and social status, and to prevent social problems. The Section further stated that the Act would contribute to giving individuals opportunities to live and reside independently and to achieve an active and meaningful existence in a community with others. These far-reaching objectives were entirely universal in character and served as the normative goals for all operations and services.

\textsuperscript{320} NOU 2001:22, p 41.  
\textsuperscript{321} See for example Seip 1994, p 249.  
\textsuperscript{322} NOU 2001:22, p 42.  
\textsuperscript{323} See for example Seip 1994, p 249 and p 410.  
\textsuperscript{324} Lov 13 desember 1991 nr 81 om sosiale tjenester mv.
under the Act. The objectives were not only to be understood as goals of welfare state policy as such, but also as giving expression to the fundamental values and principles on which social law rests. The ambitious nature of the objectives makes it clear that the social services alone could not realize them, as this would have required a coordinated effort on the part of all the operations of the Norwegian welfare state, for example the social security system, the health and medical services, the education system etc. The cooperation between the social services and other sectors of the public administration was also explicitly mandated in Chapter 3 of the Act.

In Chapter 4, Section 2 of the Social Services Act it was stated that the social services shall include practical assistance and training for those who are in special need of assistance owing to illness, disability, age or for other reasons. It was further stated that the social services shall organize measures to provide respite for persons and families with especially burdensome care work, to support contacts for people and families in need of them owing to disability, age or social problems, to provide places in institutions and accommodations with 24-hour caring services for those who need them owing to disability, age or for other reasons and to pay money to persons with especially burdensome care work. Section 3 specified the scope of inclusion under the measures mentioned above. Persons entitled to help were those who were unable to care for themselves, or who were completely dependent on practical or personal help to manage their everyday life.

The Social Services Act was replaced in 2011 with the Municipal Health and Social Services Act which carries forward much of the material and ideological content in the old Social Services Act.

### 3.4 Transport Policy and Law for People with Disabilities in Sweden, Denmark and Norway

Many ideological tenets in disability law and policy in the Nordic countries carry ideas about equality and full participation in society for all those with disabilities. One measure, among many others, of participation in society is the activity of moving around in it, for example by using some means of transportation. The World Health Organization (WHO) has devised the International Classification of Functioning, Disability and Health (ICF) which is used globally to define and measure disability in an individual and societal

---

326 Lov 24 juni 2011 nr 30 om kommunale helse- og omsorgstjenester m.m.
context. Chapter 4 of the ICF concerns mobility for people with disabilities. Mobility is defined as moving by changing physical position or location or by transferring from one place to another, by carrying, moving or manipulating objects, by walking, running or climbing, and by using various forms of transportation. Using transportation, then, is defined by the ICF as moving around as a passenger, such as being driven in a car or on a bus, rickshaw, jitney, animal-powered vehicle, or private or public taxi, bus, train, tram, subway, boat or aircraft. As a result, almost every vehicle design regularly used by humans somewhere on the planet is included in the ICF definition. According to the ICF traveling by public motorized transport is defined as:

“Being transported as a passenger by a motorized vehicle over land, sea or air designed for public transportation, such as being a passenger on a bus, train, subway or aircraft.”

Thus, in the Nordic welfare state context, an important measure of full participation in society is the extent to which a person can utilize vehicles designed for public transportation.

Public transportation is often grouped into three main categories:

- General public transport: pre-organized, regular transport services running to a timetable, provided for the general public, either for some economic compensation or free of charge

- Special public transport: pre-organized transport services, provided for a specifically entitled group of persons, either for some economic compensation or free of charge

- Semi-general public transport: an intermediate form between general and special public transportation, pre-organized transport services, usually provided for the general public, for example dedicated accessible service buses in urban areas, serving more or less flexible routes on a more or less flexible timetable within the framework of the regular general public transport system

The distinctions between the three categories are not sharp. While Sweden, Denmark and Norway all have examples of semi-general public transport operating as complementary parts of various general public transport systems, no country specifically requires such operations by law. Semi-general

327 World Health Organization: International Classification of Functioning, Disability and Health (ICF) (website).
public transport operations may in certain instances include pre-ordered traffic in specially adapted vehicles for people with disabilities, a form which is otherwise characteristic of special public transport. Support for transport for people with disabilities comes in different forms and uses different legal strategies within the rationality of the welfare states. Support can, for example, be given directly to the disabled person as compensation for increased travel costs in everyday life or as support directly to the carrier. Legal criteria will generally decide the level of support and what kind of journeys will be supported. Support may be directly or indirectly tied to an activity or a purpose, either as a special transport system designed for the specific activity or purpose, or as compensation for extraordinary travel costs associated with the specific activity. Legal criteria will then often decide which private individuals are eligible for participation in the specific activity. Support can also take the form of services which are offered to certain groups of people with disabilities who are deemed eligible for support in line with legal criteria. In accordance with sector responsibility, no specific authority in any of the three countries is solely responsible for public transport for people with disabilities. Instead, many different authorities share the task of integrating and mainstreaming the needs of people with disabilities within the regular responsibilities of each authority.

The EU disability policy and legislative strategy regarding disability is deeply rooted in the overall equality strategy. Mainstreamed and accessible goods and services are understood to empower people with disabilities to become stronger in their roles as workers and consumers. To that end the EU sets forth an array of technical standards, aimed at manufacturers and providers of goods and services. One such example of technical standards is the Bus and Coach Directive 2001/85/EC. This directive establishes special provisions and technical requirements for vehicles with more than eight passenger seats and lays down, for instance, that those vehicles, when used for urban passenger transport, must be accessible in certain respects. The Directive was implemented in Sweden through the Vehicle Act which allows an authority designated by the national government to issue further specific regulations. Within the Danish implementation process, the Danish Transport Authority is authorized to issue specific regulations. Norway, as a signatory power to the EEA Agreement, has implemented the Bus and Coach Directive through the

330 See for example Tetraplan 2007, p 22.
Road Traffic Act\textsuperscript{332}, which authorizes the national government to issue specific regulations.\textsuperscript{333}

In Sweden the National Board of Housing, Building and Planning\textsuperscript{334} is charged with the task of supervising the municipalities in matters of accessibility with regard to housing, construction and urban development, including bus terminals, train stations, ferry terminals etc, under Chapter 8 of the Planning and Building Act\textsuperscript{335} and Chapter 8 of the Planning and Building Decree\textsuperscript{336}. The County Administrative Boards are responsible for planning government investments in certain parts of the Swedish road network and also supervise environmental measures and investments in the road network, see the Road Act\textsuperscript{337} and the Road Proclamation\textsuperscript{338}. The municipalities are responsible for planning the investments in the municipal network of streets and roads, for laying down local traffic and parking regulations and for the special transport services\textsuperscript{339} according to the Special Transport Services Act\textsuperscript{340} and the national special transport services\textsuperscript{341} according to the National Special Transport Services Act\textsuperscript{342}. The counties or regions are responsible for so-called healthcare journeys\textsuperscript{343} under Section 6 of the Healthcare Act\textsuperscript{344} and the Healthcare Journeys Reimbursement Act\textsuperscript{345}. The transport providers themselves, be they privately owned companies or public enterprises, are responsible for the accessibility, or lack thereof, of the vehicles and facilities used in their services, see the Accessible Public Transport Act\textsuperscript{346} and the Accessible Public Transport Decree\textsuperscript{347}.

The Swedish Transport Administration\textsuperscript{348} is the national authority commissioned with overall sector responsibility for the road transport system. It is responsible for the exercise of public authority within the planning,
construction, operation and maintenance of the national road network and is tasked with issues relating to environmental issues, road safety, accessibility, transport quality, regional development and also gender equality. The sector responsibility also includes for example oversight of road-bound public transport, adaptations for disabled persons, commercial traffic and applied research development in the road transport system. The Swedish Transport Administration is also tasked with supervising measures taken by transport providers and to generally promote accessibility in all kinds of public transportation under the Accessible Public Transport Act and the Accessible Public Transport Decree.

The Swedish Transport Agency is the national traffic and transportation authority for rail, air, sea and road traffic. The Agency exercises sector responsibility, issues regulations and supervises commercial transport and is, among other things, tasked with the responsibility of achieving good accessibility, high quality, secure and environmentally-aware transport.

In Sweden, Sections 2, 3, 4 and 5 of the Special Transport Services Act stipulate that sector responsibility in the communications and transport sector is also fully applicable to the Special Transport Services. The local sector responsibility for all kinds of public transport was set out in the, now abolished, Act on Responsibility for Certain Public Transport. This particular Act established the organizations of the County Traffic Authority and Traffic Principal in every county or region. The County Traffic Authority was a public governing body comprising the county or region plus the several constituent municipalities. Those public organs could in most cases, however, agree among themselves to create a more flexible County Traffic Authority so that the county only or the municipalities only may comprise the Authority. Whatever its final makeup, the County Traffic Authority in each county or region organized the Traffic Principal, a separate public administration which operates the day-to-day tasks of coordinating, supervising and procuring public transport in the county or region. While the County Traffic Authority has a mandated sector responsibility to increase accessibility throughout the county’s or region’s entire public transportation system, in Section 2, a specific responsibility for special transport services may be included, according to Section 1, if a municipality within the county or region delegated its responsibility under the Special Transport Services Act to

349 Transportstyrelsen.
351 Länstrafikansvarig.
352 Trafikhuvudman.
353 Two or more counties can, if they so desire, and if permitted by the government, merge into one so-called region.
the Traffic Principal in the respective county or region. The Act on Responsibility for Certain Public Transport was replaced in 2012 with the current Public Transport Act\textsuperscript{354}. The Public Transport Act replaced the County Traffic Authorities and the Traffic Principals with Regional Public Transport Authorities\textsuperscript{355}, which function in a very similar manner.\textsuperscript{356}

In Denmark, the Danish Energy Agency\textsuperscript{357} supervises and issues implementing regulations concerning the Construction Act\textsuperscript{358}. The Authority has sector responsibility for all regulation of building construction and thus for all regulation of accessibility to buildings, including train stations, bus terminals, airports and other communication centers. Under the Traffic Organizations Act\textsuperscript{359} every region is obliged to establish one or more traffic organizations which, among other things, are to provide individual transport services for people with severe mobility impairments\textsuperscript{360}. Under the Act the traffic organizations are responsible for coordinating public transport within their respective regions, setting the fees and charges, and for the overall planning of general public transport.

The Danish Transport Authority\textsuperscript{361}, which is an agency within the Danish Ministry of Transport, supervises all commercial transport, including public transport, and issues regulations and general guidelines under Executive Regulation nr 893\textsuperscript{362}. The Danish Transport Authority is also responsible for collecting and analyzing data on public transport. The Danish municipalities are assigned a vast number of responsibilities regarding public transport for people with disabilities under the Social Services Act\textsuperscript{363}. The municipalities and the regions share responsibilities for providing transportation for people with disabilities to and from doctor’s offices, clinics, hospitals etc under Sections 170 to 174 of the Healthcare Act\textsuperscript{364}.

A number of different transport programs for people with disabilities are used in relation to specific services in Danish society. Examples are transportation

\textsuperscript{354} Lag (2010:1065) om kollektivtrafik.
\textsuperscript{355} Regionala kollektivtrafikmyndigheter.
\textsuperscript{356} For a detailed understanding and discussion of the Public Transport Act and the Regional Public Transport Authorities, see Svedberg 2013, p 213 ff.
\textsuperscript{357} Energistyrelsen.
\textsuperscript{358} Bekendtgørelse nr 1185 af 14/10/2010 af byggeloven.
\textsuperscript{359} Bekendtgørelse nr 412 af 11/04/2010 af lov om trafikselskaber.
\textsuperscript{360} “Individuelle kørselsordninger for svært bevægelseshæmmede” in Danish.
\textsuperscript{361} Trafikstyrelsen.
\textsuperscript{362} Bekendtgørelse nr 893 af 29/08/2012 om Trafikstyrelsens opgaver og beføjelser, klageadgang og kundgørelse af visse af Trafikstyrelsens forskrifter.
\textsuperscript{363} Bekendtgørelse af lov nr 150 af 16/02/2015 om social service.
\textsuperscript{364} Bekendtgørelse nr 913 af 13/07/2010 af sundhedsloven.
to and from healthcare facilities under Sections 170 to 175 of the Healthcare Act, school transport for children under Section 26 of the Act on Public Schooling\textsuperscript{365} and transport to and from certain workplaces for people under 65 years of age and certain daily activities under Sections 103 to 105 of the Social Services Act. A common feature of these and other transport schemes is that such services are predicated on the needs of welfare state administrations to have people transported safely and effectively to and from service outlets and institutions in a timely fashion. Within this context, the individual transport services for people with severe mobility impairments stand out as an exception as these services are the only ones mandated by Danish law which are meant to meet the private purposes of citizens, rather than facilitate the needs of welfare state operations or cater to the needs of a specially organized activity. The individual transport services are organized as door-to-door services by either taxicabs or specially adapted vehicles. The designation of individual services notwithstanding – the individual transport services for people with severe mobility impairments are to be part of the local and regional public transportation according to the national government.\textsuperscript{366}

Among those aged 16-64 years in Denmark around 49 000 persons, a majority of whom are women, are estimated to have problems moving about outdoors on their own. Many possible impairments tend to increase the likelihood of having trouble moving about outdoors in everyday life. Physical impairments are often the worst in these instances but impaired vision is also a significant factor. The largest group to experience problems are people with impairments to the legs. People with impaired vision or hearing also experience similar problems; where poor vision is a problem for many women and impaired hearing for many men.\textsuperscript{367} There are no comprehensive reports or studies about how people with disabilities in Denmark use general public transport. Despite the absence of a complete overview of the situation regarding general and special public transport for people with disabilities in Denmark, some numbers are readily available. Around 1\% of the population between the ages of 16-64 cannot utilize general public transport at all. Another 1\% cannot utilize general public transport if a lot of other people travel at the same time. Yet another 2\% of the same age group (16-64) can travel with a lot of other people but only with considerable difficulties. A further 2\% can travel with other people with some difficulties. All in all around 6\% of this age group experience varying degrees of difficulty utilizing general public transport.\textsuperscript{368}

In the group of people aged 64 years of age and older many more experience

\textsuperscript{365} Bekendtgørelse af lov nr 521 af 27/05/2013 om folkeskolen.
\textsuperscript{366} LFB 2005-04-12 nr 81 Appendix 2.
\textsuperscript{367} Bengtsson 2008, p 128 ff.
\textsuperscript{368} Bengtsson 2008, p 142 f.
all kinds of difficulties when traveling by general public transport. In the whole of Denmark around 44 000 people are entitled to utilize individual transport services for people with severe mobility impairments. Ca 75% of these entitlement holders are aged 65 years or older and 69% of all entitlement holders are women. The average entitlement holder goes on 24 journeys per year using the services. On average 0,8% of the entire population is entitled to use the services, however there are large regional variations.\textsuperscript{369} In 2004 more than 1,1 million journeys were made using the services.\textsuperscript{370}

In Norway the Norwegian Public Roads Administration\textsuperscript{371} exercises sector responsibility for road traffic and is responsible for the planning, construction and operation of national and county road networks, for vehicle inspection and for driving instruction and licensing, and supervises road transport providers. The Norwegian Public Roads Administration operates under Executive Regulation 386\textsuperscript{372} and issues regulations under the Road Act\textsuperscript{373}. Regulations by the Administration include those on the design of streets, including the design of sidewalks, stairs, signs, bus stops and terminals etc. The Administration also issues regulations concerning buses and other passenger transport vehicles.

While the national government in Norway exercises general supervision of the transport sector, the counties are largely responsible for planning and coordinating all road-bound local and regional public transport. The national government subsidizes public transport in all counties and some major cities, but the administration and operation is left to the counties and some major municipalities.\textsuperscript{374} Some Norwegian counties have delegated their responsibilities to private companies and others have simply integrated the administration of the transport sector into the central county administration.\textsuperscript{375} The counties also provide special transport services for people with disabilities\textsuperscript{376}. These services are mainly organized as individual door-to-door services by taxi or by specially adapted vehicles. The services are the only mandated special transport solutions that exist in Norway for the private purposes of individual citizens, rather than facilitating the needs of welfare state operations or catering to the needs of a specially organized

\textsuperscript{369} Tetraplan 2007, p 9, p 28 f and p 33.
\textsuperscript{370} LFTB 2005-05-26 nr 81 Appendix 2.
\textsuperscript{371} Statens vegvesen.
\textsuperscript{372} Forskrift 15 mars 2011 nr 386 Instruks for Statens vegvesen.
\textsuperscript{373} Lov 21 juni 1963 nr 23 om vegar.
\textsuperscript{374} NOU 2001:22, p 128 f.
\textsuperscript{375} Nielsen & Usterud Hanssen 2008, p 37.
\textsuperscript{376} "Fylkeskommunal spesialtransport for funksjonshemmede", or "TT-ordningen", where the abbreviation "TT" stands for "Tilrettelagt Transport" in Norwegian.
activity. The Norwegian counties’ responsibilities and competence derive either from delegation of authority from the national government or directly from the Commercial Transports Act\textsuperscript{377}. The Norwegian municipalities do not have any major legal responsibilities in the field of public transport, but some municipalities are nonetheless very active in the transport sector, and provide various transport possibilities based on local circumstances. Some municipalities also contribute financially to the special transport services for people with disabilities in their respective counties.\textsuperscript{378}

Like the Swedish and Danish municipalities, the Norwegian are tasked with vast responsibilities regarding infrastructure and planning, including accessibility of buildings. Under the Act on Planning and Building Procedure\textsuperscript{379} the principle of universal design must be implemented in all planning procedures and constructions. The Act on Prohibition against Disability Discrimination\textsuperscript{380} sets out a duty to implement universal design and accessibility in all public and all private buildings with a public purpose, including bus terminals, train stations, ferry terminals and suchlike.

Several public transport solutions pertaining to people with disabilities coexist in Norway. For example, the national government is responsible for transportation, or reimbursements for private transport, to and from certain healthcare facilities under Chapter 2, Section 6 of the Patients’ Rights Act\textsuperscript{381}. The national government is also responsible for various allowances and support programs under the Social Security Act\textsuperscript{382} covering, among other things, excess travel costs for people with disabilities. The counties are, for example, responsible for school transport for children under Chapter 7 of the Act on Public Schooling\textsuperscript{383}. Chapter 7, Section 3 of that Act lays down for instance that children with disabilities who need school transport are entitled to it regardless of the distance between the child’s residence and the school. As a trial project the national government in cooperation with certain counties organized special transport for people with disabilities to and from the workplace and/or higher education facilities. The trial project was launched in 2001 as a one-year project and has been extended several times. As of 1 September 2014 the Norwegian Labor and Welfare Administration\textsuperscript{384} (NAV) has become responsible for a national reimbursement program for such

\textsuperscript{377} Lov 21 juni 2002 nr 45 om yrkestransport med motorvogn og fartøy.
\textsuperscript{378} Intradepartmental Working Party Report 2005-06-01, p 68.
\textsuperscript{379} Lov 27 juni 2008 nr 71 om planlegging og byggesaksbehandling.
\textsuperscript{380} Lov 21 juni 2013 nr 61 om forbud mot diskriminering på grunn av nedsatt funksjonsevne.
\textsuperscript{381} Lov 2 juli 1999 nr 63 om pasientrettigheter.
\textsuperscript{382} Lov 28 februar 1997 nr 19 om folketrygd.
\textsuperscript{383} Lov 17 juli 1998 nr 61 om grunnskolen og den vidaregåande opplæringa.
\textsuperscript{384} Arbeids- og velferdsdirektorat (NAV).
special transport to and from the workplace and higher education facilities under Section 13 of the Labor Market Services Act\textsuperscript{385}. People who receive car allowance or basic benefit for transport are entirely excluded from the program, under Executive Regulation 648\textsuperscript{386}, but people entitled to use the special transport services for people with disabilities might participate.

In 2006 around 110 000 people in Norway were entitled to use the special transport services for people with disabilities, a decrease from the “peak” year of 2000 when a grand total of around 122 700 persons were entitled to do so. The actual use of the services, that is, the extent to which entitled individuals actually travel by them varies from county to county, both with regard to number of journeys and distances traveled.\textsuperscript{387} The vast majority of people utilizing the services are elderly. In 2006 an estimated 86\% of all travelers were older than 60 years of age and more than 50\% of all travelers were older than 80 years of age. Around 75\% of all travelers are women.\textsuperscript{388} Most journeys with special transport services for people with disabilities are used for everyday activities such as shopping and visits to family and friends. When the services cannot be used the most frequently used other types of transportation are taxi at ordinary metered prices and transport by family and friends. However, 14\% of entitled individuals are completely dependent on the services for their leisure journeys and travel only by special transport services. Around 60\% of entitled persons never go by ordinary bus while the remaining 40\% travel by bus at least to a limited extent. It has been remarked that:

“the typical person using the services is a woman over 70 years of age who lives alone and who experiences age-related mobility problems.”\textsuperscript{389}

In 2008 the number of entitled persons started to increase slightly, around 114 500 people were entitled to utilize the services, an increase of 3\% compared to 2006. However, the number of journeys per entitled person decreased during the same period, also by around 3\%. Gisle Solvoll concluded that more people were allowed to travel, but they may have had to travel a bit less.\textsuperscript{390}

In the mid-1980s the parliament indicated that the perceived need for special transport was four to five times higher than the number of people who actually

\textsuperscript{385} Lov 10 desember 2004 nr 76 om arbeidsmarkedstjenester.
\textsuperscript{386} Forskrift 16 mai 2014 nr 648 om stønad til arbeids- og utdanningsreiser.
\textsuperscript{387} Solvoll 2006, p 5 f.
\textsuperscript{388} St meld nr 25 (2005-2006), p 103.
\textsuperscript{390} Solvoll 2008, p 4.
had some access to it.\textsuperscript{391} A decade later, in 1995 and 1996 around 400 000 people in Norway supposedly were wholly or partially dependent on taxis for their transportation in everyday life due to some form of disability. At the same time around 103 500 people were entitled to use the special transport services.\textsuperscript{392} Taken together, these figures indicate that rather more people experience difficulties using general public transport in Norway than are entitled to use special transport services for people with disabilities.\textsuperscript{393}

Another important aspect of mobility is to move about with a vehicle of one’s own, in other words, driving. Driving, then, is defined in a universalistic manner by the ICF as being in control of and moving a vehicle or the animal that draws it, traveling under one’s own direction or having at one’s disposal any form of transportation, such as a car, bicycle, boat or animal-powered vehicle.\textsuperscript{394} Driving a motorized vehicle, according to the ICF, is a form of participation that means steering and moving a vehicle with a motor, such as an automobile, motorcycle, motorboat or aircraft.

Motorized cars are present in modern society in a greater degree than ever before and the number of cars seems to grow endlessly.\textsuperscript{395} A large portion of transportation within the EU is by road. No less than ca 44 % of all freight and ca 85 % of all passenger transport within the EU goes by road. Road transport accounts for around 73 % of the inland freight transport and for around 83 % of inland passenger transport. In the EU an estimated 212 million private cars, around 31 million commercial vehicles, around 25 million powered two-wheel vehicles and around 719 400 buses and coaches make up the fleet of road-bound motor vehicles. The road transport of freight and passengers employs a grand total of around 4.2 million people in the EU.\textsuperscript{396}

Cars are the most common means of transport in everyday life for people with disabilities, either through special public transport, other forms of adapted transportation, or through everyday transport in private cars. For all people with and without disabilities alike, private cars are the most commonly used and also the most desired mode of transport.\textsuperscript{397} As such, private cars have

\textsuperscript{392} Samferdseldepartementet 1997, p 17.
\textsuperscript{393} NOU 2001:22, p 144.
\textsuperscript{394} World Health Organization: International Classification of Functioning, Disability and Health (ICF) (website).
\textsuperscript{395} See for example Vägverket 2004, p 4 and Statistiska Centralbyrån 2013, p 190.
\textsuperscript{397} Vägverket 2001:125, p 99.
been described as being better than special public transport in terms of increased individual freedom, autonomy and independence, especially regarding when and where to go.\textsuperscript{398} With a private car there is no need to subject oneself to rules about booking and ordering and time limits, and private cars can offer the possibility of spontaneous journeys not readily available with any form of public transport.\textsuperscript{399} A Swedish government commission has noted that from a societal perspective a private car is also a better aid than special public transport in meeting the objective of making people equal and full participants in society.\textsuperscript{400}

Analyses indicate that compared to the population at large, significantly fewer people with disabilities compared to the general population own or have access to a private car. The difference in car ownership between age, gender and different types of impairments is considerable. In Denmark, for example, young people with mobility impairments generally have private cars to a greater extent than other people of the same age. Regarding people with impairments to the function of the arms, women with such impairments have cars more often than women without, for men, however, no such differences can be discerned. Men with developmental neurobehavioral disorders do not have cars to anything like the same extent as other men, while similar disorders in women apparently do not influence their having cars compared to other women. Mobility impairments in general also mean a much greater likelihood that a person with such impairment and who has a car is also entitled to car allowance.\textsuperscript{401}

Representatives from Swedish disability organizations have concluded that car allowance:

"is an investment viewed from a societal perspective. Economically it is more advantageous for society to give the private individual car allowance than to pay for extensive traveling with special transport services. For the private individual the choice is often easy. Most people who have the possibility to get a car of their own and thereby largely solve their transport needs choose to do so. The car as a technical aid gives people with disabilities possibilities that are impossible to overrate to lead a life on equal terms with other citizens."\textsuperscript{402}

\textsuperscript{398} SOU 2005:26, p 73.
\textsuperscript{399} See for example Riksrevisionsverket 1999, p 46.
\textsuperscript{400} SOU 2005:26, p 73.
\textsuperscript{401} Bengtsson 2008, p 138 ff.
\textsuperscript{402} SOU 2005:26 (Appendix 4), p 298.
Private cars are, however, not a viable alternative for everyone. One problem identified by disability researchers is the tensions and conflicting experiences of individuals, sub-groups and larger groups of people. In disability policy, the diverse group of people with disabilities is often treated as a more or less homogeneous group. One effect of this is that the particular problems of those with the greatest needs sometimes remain hidden within the larger group. For example, people with impairments which affect their ability to move about and walk, exhibit travel patterns that differ from those of the general population; they travel considerably less often and when they do, they travel shorter distances.\textsuperscript{403} People with visual impairments cannot usually expect to drive a private car, and those people are often dissatisfied with their possibilities to travel in everyday life.\textsuperscript{404}

Another effect of disability diversity on policy is to emphasize the potential conflict between, on the one hand, mainstreaming measures aimed at increasing accessibility for everyone and, on the other, special solutions aimed at increasing the possibilities for those with the most severe impairments. Within the field of public transport, this highlights a potential conflict or tension between the legal principles of anti-discrimination, equal treatment, accessibility and universal design, and legal principles of compensation, protection and special consideration.\textsuperscript{405}

\textsuperscript{403} Börjesson 2002, p 5.
\textsuperscript{404} See for example Myndigheten för delaktighet 2014a and 2014b.
\textsuperscript{405} The literature on tensions in Nordic law between mainstreaming, accommodation of diversity and special considerations for certain groups of people is extensive. See for some examples Sahlin 2004, Hellum & Ketscher 2008, Pylkkänen 2009, Ventegodt Liisberg 2011 and Svedberg 2013.
PART II – Transport Services for People with Disabilities
4 The Law Governing Transport Services in Sweden, Denmark and Norway – Emergence and Development

4.1 Special Transport Services in Sweden – from Voluntary Operation to Municipal Obligation

Special transport services is an entirely modern concept, closely connected to the operations of modern taxi cabs. The car is the most frequently used means of transportation in Sweden for people both with and without disabilities.406 For many people, with a variety of impairments, special transport services provide the main means of transportation for short or medium to short distances. As such, the services are a very important element in their everyday life for many people with disabilities.407 From the outset the special transport services were provided by regular taxi companies, mainly using their regular vehicles. This allowed the services to be provided effectively, discreetly and around the clock.

In the 1960s providing special transport services was a voluntary commitment on the part of the municipalities, and in 1963 only four out of Sweden’s (then) 850 municipalities actually did so. A few years later, however, the number of municipalities providing special transport services had increased to 100 and during the 1970s the services were successively introduced in all municipalities throughout the country. Government contributions, made available from 1975, to the municipalities for maintaining the services created the incentives and preconditions necessary to establish special transport services as a regular feature in Swedish disability policy. When the old Social Services Act came into effect in January 1982, special transport services for people with disabilities and elderly people became a regular municipal service. Under this Act the special transport services were considered to be partly social assistance, partly a social service and partly a transport service. The social welfare aspects were predominant and generally the services were treated as a social welfare service.408

406 Trafikanalys 2014.
The legal basis for the special transport services was the framework character of the Social Services Act. A private individual could apply to the municipality for a decision about entitlement to use the special transport services. The municipality then ruled on the application, either citing Section 6 or Section 10 of the Act. Under Section 6 entitlement meant that the service was provided as part of social assistance aimed at ensuring the private individual (in the language of Section 6) a reasonable standard of living and improving the quality of the applicant’s way of life in general, if such needs cannot be met in some other way. Section 6 also stated that the social assistance should be so construed as to strengthen the individual’s resources for leading an independent life. A decision based on Section 6 thus included an individual test of whether the specific living conditions of the particular applicant were such that entitlement to use special transport services would improve them.  

Under Section 10, however, entitlement meant that use of special transport services was part of a social service aimed (in the language of Section 10) at making it easier for the private individual to live at home and maintain contact with others. A decision under Section 10 thus included a test of whether public transport in the municipality was readily accessible to the applicant or whether the applicant should be allowed to use the special transport services.

In deciding on an application the municipality could assign importance to a number of circumstances, such as the financial situation of the applicant, their general level of accommodation and availability of public transport in the vicinity, a doctor’s certificate stating the applicant’s need for special transport services etc. Entitlement to use special transport services could be made valid until further notice or for only a specified period of time. The differences, however, between an entitlement under Section 6 and an otherwise identical entitlement under Section 10 were greater than just the criteria for eligibility. While a municipal decision granting entitlement in both cases led to the applicant being able to use the very same special transport services, the applicant’s legal position and procedural opportunities were quite different in a case where the applicant was dissatisfied with the decision. Any municipal decision under Section 6 could be appealed to the administrative courts which had the power to confirm, reverse or vary any part of the decision under appeal. A municipal decision under Section 10 was final, and for all practical purposes left the applicant with no legal recourse. The only part of a municipal decision under Section 10 that could be tried in court was the legality of the municipality deciding the matter at all. In the early 1990s a survey indicated that out of the (then) ca 270 Swedish municipalities, 125 based their decisions

---

409 Prop 1979/80:1, p 185 f.
410 Prop 1979/80:1, p 289 f.
solely on Section 6, 45 municipalities solely on Section 10 and around 100
municipalities based their decisions on both sections, depending on the

As of 1 January 1998 special transport services were abolished in the old Social
Services Act, and the new Special Transport Services Act\(^\text{412}\) came into effect. One of the chief motives behind the new Act was to save money by creating
incentives for authorities and transport providers to reduce the numbers of
journeys provided by special public transport and instead increase use of
general and semi-general public transport. The idea was that increasing the
use of general public transport by people with disabilities would serve as an
impetus to mainstream the public transport sector and make general public
transport more accessible which in turn would further reduce the use of
special transport services and so on.\(^\text{413}\)

Another idea behind the new Act originated from a change in the general
perception of special transport services as an aspect of the attributes and
services of the welfare state. Mobility for people with disabilities, and travel
and transportation for the elderly, was too large an issue to be handled within
the framework of the special transport services alone. The mobility of people
with disabilities was transformed from a social welfare issue into one of
transportation and infrastructure. Even though special transport services
were still an expression of social care and assistance, the national government
designated the services to mainly be treated as an issue of traffic policy that
aimed to put in place traffic solutions that also adequately provided for people
with disabilities. The government explicitly stated that the objective was not
to increase the number of eligible persons entitled to special transport
services.\(^\text{414}\)

The attitude to the special transport services underwent a transition from the
1970s and the 1980s, when the services were seen as an integrated part of the
social welfare and assistance system, where the aim was to bring about the
integration and normalization of people with disabilities and, in the same
vein, make it possible for elderly people with disabilities to continue to live in
their own homes for a longer period of time, thus avoiding having to move
permanently into nursing homes or similar facilities. In these respects the
special transport services are linked in terms of time and policy to the
deinstitutionalization process. The Special Transport Services Act of 1997

\(^{411}\) Prop 1996/97:115, p 27.
\(^{412}\) Lag (1997:736) om färdtjänst.
\(^{414}\) Prop 1996/97:115, p 35.
made evident the transformation of the services from a social welfare issue to a traffic issue. The idea of administrative normalization – sector responsibility – pointed forward to a situation where the needs of people with disabilities to move freely and unimpeded become integrated into the larger traffic and transport policy. However, while the social welfare view of the services was being abandoned, organizations representing people with disabilities have stated repeatedly that many of the disabled are quite dissatisfied with their possibilities to travel, and that the younger and more integrated and active in society the disabled person is, the more dissatisfied they are likely to be with their options for travel and transportation.415

4.2 National Special Transport Services in Sweden – from National Experiment to Decentralization

The national special transport services were inaugurated in July 1980 as an experimental project to provide nationwide long-distance domestic travel opportunities for people with disabilities who, due to severe and lasting impairments, needed specially adapted and expensive means of travel. As the national government put it at the time, this was a new transport service for:

“certain groups of handicapped people [...] who despite a far-reaching vehicular and environmental technical adaptation of the traffic system are not judged in the foreseeable future to be able to travel by public transportation on their own”.416

The project to establish the national special transport services took place in a context where, from the mid-1970s, special transport services were established in all Swedish municipalities and where the new Disability Accessible Public Transport Act417 was introduced, which aimed to increase the overall accessibility to general public transport. The government stated that the national special transport services were supposed to take up where the municipal services left off, which essentially meant interregional and some regional journeys.418

The project did not aim to enlarge the special transport services into a national program. Rather, the national special transport services were from the very

417 Lag (1979:558) om handikappanpassad kollektivtrafik.
start aimed at a more narrowly defined group of eligible people, as it was deemed probable that most people eligible for the municipal services would still be able to travel longer distances by general public transport. The national special transport services journeys would often use the available means of general public transport. However, the new national services were based on a flexible approach, where the means of travel were supposed to be chosen according to which best accommodated the specific needs of the individual traveler. Thus, a national special transport services journey could be by air or train, if need be in a first class sleeping compartment or, if necessary, it could be entirely by means of a specially adapted motor vehicle.419

A newly formed national public authority, the now defunct National Transport Council420, administered the new services. In 1984 the national special transport services were made permanent and this body was tasked with following up the implementation of the services and the issuing of regulations.421 The municipalities were tasked with deciding which applicants should be granted entitlement to use the services. Under Section 5 of the now obsolete Decree on Reimbursement for National Special Transport Services422 such a municipal decision could be appealed to the National Transport Council. All decisions by the Council itself were final. According to Section 2 of the Decree an entitlement to use national special transport services could be granted to such persons who, due to severe and lasting impairments, could not travel any other way without incurring excess costs. If the entitlement holder needed an escort during the journeys, the entitlement could also include the escort. It was also decreed that each entitlement could only be used for recreational purposes or some other private purpose, if the National Transport Council did not issue regulations to the contrary. Section 3 stated three cumulative preconditions for eligibility:

1. the means of travel shall be either general public transport or a specially accommodated vehicle,
2. the length of the route must exceed 200 kilometers, and
3. the route must pass through at least two municipalities.

Section 4 decreed that the individual traveler would pay an amount corresponding the cost of a second-class railroad ticket for the same journey; any excess cost was covered by public funds. In the case of an individual

420 Transportrådet.
421 Förordning (1979:1037) med instruktion för transportrådet. See also Prop 1983/84:100 Appendix 8, p 13.
traveling with an escort the entire cost of travel for the escort was covered by public funds.

A new Decree was issued in 1989, the now obsolete Decree on National Special Transport Services\textsuperscript{423}. In Section 1 of that Decree, the national special transport services were defined as follows:

“In this decree national special transport services refers to an enterprise whereby the national government contributes to the cost of travel for people who, due to a severe and lasting impairment, must travel in a particularly costly manner and when the purpose of travel is recreational or leisure activities or some other private purpose”.

Section 2 stated as three cumulative preconditions for eligibility that:

1. the means of travel shall be general public transport, taxi, or a specially adapted vehicle,

2. the route passes through two or more municipalities or, regarding journeys that originate within Stockholm County, over the county border, and

3. special transport services provided for by a municipality or a county cannot be used and the journey is not for any other reason provided for by the national government, a municipality or a county.

Section 2 further decreed that an entitlement to use national special transport services should be granted for those means of travel that, taking into consideration the applicant’s impairment and other conditions, incur the lowest cost. In 1991 an option for the traveler, given certain conditions, to choose to travel by taxi rather than general public transport was implemented. Section 4 stated that an entitlement could be granted either for a specific journey or for a period of time. If there were special reasons an entitlement could be issued that included provisions regarding the scope of the journeys.

Section 6 of the Decree on National Special Transport Services stated that the individual traveler would pay a fee for each journey, the amount being regulated from 1992 onward by the National Transport Services Board. The excess between the fee and the actual cost of the journey was covered by the national government. As before, an escort accompanying the traveler paid no fee and the entire cost of their travel was covered by the government. The fees that entitled travelers should pay were based on the cost of a second-class rail ticket, which was understood to be the normal way of traveling for everyone;

\textsuperscript{423} Förordning (1989:340) om riksfärdtjänst.
the cost of such a ticket was thus always used as the point of reference for determining the size of the individual fee.\textsuperscript{424} Under Section 10 a person who was refused an entitlement to use national special transport services by the municipality or the county, or who was unhappy with some municipal provision or condition accompanying a granted entitlement, could appeal to the National Transport Services Board. All decisions by the Board were final, as no decisions made by the Board could be appealed further.

As the National Transport Council was closed down in 1992, a temporary national public authority, the newly formed, and now defunct, National Transport Services Board\textsuperscript{425} administered all national government reimbursements to carriers and travel agents for the cost of the services, exercised supervision and issued regulations under the now abolished Decree with Instruction for the National Transport Services Board\textsuperscript{426,427}.

In November 1993 the now abolished Municipal Administration of National Special Transport Services Act\textsuperscript{428} came into force. The National Transport Services Board was closed down, and from 1994 the municipalities, or in some instances, the counties, were given full responsibility for the national services. The decentralization occurred against the backdrop of a considerable increase in the number of journeys during the 1980s utilizing national special transport services. The explanation given for this was that a small number of people with disabilities made a large number of journeys every year, many said to be over relatively short distances. At the same time the expansion and increased coordination of the special transport services, still operating under the old Social Services Act, at the county level, led to an increased number of such journeys being made between different municipalities. According to the government this indicated that it would be advantageous from a fiscal perspective to increase coordination between the two services.\textsuperscript{429}

According to Section 2 of the Municipal Administration of National Special Transport Services Act the national special transport services were to be used by such persons who, after application, had been deemed entitled to do so. Questions about entitlements were tried by the municipality or, in certain instances, the county. Under Section 3 an entitlement should be granted provided that:

\textsuperscript{424} See also Hansson 2008, p 12.
\textsuperscript{425} Styrelsen för riksfärdtjänst.
\textsuperscript{426} Förordning (1991:1812) med instruktion för styrelsen för riksfärdtjänst.
\textsuperscript{428} Lag (1993:963) om kommunal riksfärdtjänst.
\textsuperscript{429} Prop 1992/93:150 Appendix 5, p 10.
1. due to the applicant’s impairment the journey cannot be made by general public transport at normal travel costs or cannot be made without an escort,
2. the purpose of the journey is recreational or leisure activities or some other private matter,
3. the journey is made within Sweden and from one municipality to another or [in certain cases] to or from another county,
4. the journey is made by general public transport, taxi or a specially adapted vehicle,
5. the cost of the journey is not, for some other reason, covered by the national government, a municipality or a county.

As before, an escort accompanying the traveler paid no individual fee, and the entire cost of travel for the escort was covered. Section 5 of the Act stated that an entitlement to use national special transport services could be issued with conditions placed on the means of travel. Such conditions could, for instance, include a specified means of transport, car sharing and specified ways of booking journeys.\textsuperscript{430} Section 6 stipulated that the entitlement holder should pay a fee corresponding to the normal cost of traveling on general public transport. As the national authorities on the national special transport services had been disbanded, the national government reserved the right to regulate the size of the fees. As before, the so-called normal costs of travel on which the fees were based was the cost of a second-class rail ticket for the journey.\textsuperscript{431}

The closing of the National Transport Services Board (and the National Transport Council before that) removed the earlier instance of appeal. Section 8 in the Act stated that decisions by an authority under the Act now could be appealed to the administrative courts. As such, any decision denying an entitlement, a decision to issue an entitlement with certain conditions or a decision to deny the otherwise entitled individual the right to an escort became subject to appeal.\textsuperscript{432}

In January 1998 the Municipal Administration of National Special Transport Services Act was replaced as the National Special Transport Services Act\textsuperscript{433} came into force. The new Act was part of a legislative package including the

\textsuperscript{430} Prop 1992/93:150 Appendix 5, p 16.
\textsuperscript{432} Prop 1992/93:150 Appendix 5, p 18.
\textsuperscript{433} Lag (1997:735) om riksfärdtjänst.
Special Transport Services Act\textsuperscript{434} and the (now abolished) Responsibility for Certain Public Transport Act\textsuperscript{435}. All these measures were aimed, among other things, at mainstreaming transport services according to the principle of sector responsibility and increased accessibility to general public transport. The new National Special Transport Services Act was aimed particularly at improving coordination between the two services, and at creating incentives to increase the accessibility and adaptation of the general public transport system, by allowing for a common and coordinated administration in the municipalities and counties of both general public transport and the two services.\textsuperscript{436}

### 4.3 Individual Transport Services for People with Severe Mobility Impairments in Denmark – from Voluntary Operation to Legally Mandated Services

Historically there are differences between the capital area of greater Copenhagen, where some form of individual transport services has existed since the late 1970s, and the rest of the country where regular individual transport services were generally established only when mandated by law in the early 1990s.\textsuperscript{437} In 1979 the county public transport organization in greater Copenhagen established a so-called door-to-door transport service for people with mobility impairments. In 1985 and 1987 two other county public transport organizations followed suit and established similar services in their respective counties. In 1987 the Danish parliament decided to give the government the task of improving access to the whole of public society for people with disabilities. The decision contained eight specific points, all of which tasked the government with proposing measures aimed at increasing accessibility to public buildings and the entire traffic and transport system. Point 5 of the parliamentary decision specifically assigned the government the task of establishing and expanding both semi-general public transport and special public transport for people with severe impairments. The stated objective was to meet the transport needs of people with severe mobility impairments locally, regionally and nationally.\textsuperscript{438} As apparently not much actually happened regarding special public transport in the late 1980s, in 1991 the Danish parliament decided, by resolution, to assign to the national

\footnotesize{\textsuperscript{434} Lag (1997:736) om färdtjänst.\textsuperscript{435} Lag (1997:734) om ansvar för viss kollektiv persontrafik.\textsuperscript{436} Prop 1996/97:115, p 1.\textsuperscript{437} Tetraplan 2007, p 35.\textsuperscript{438} Folketingstingsbeslutning B 137 12 maj 1987.}
government the more specific task of taking legislative initiatives to organize a special public transport services system for people with mobility impairments throughout the entire country. The parliament stated that with:

“the object of establishing equality between the severely mobility-impaired citizens in society and citizens without disabilities, insofar as the possibilities for transportation are concerned, the Parliament enjoins the government to ascertain, that all public transport organizations in the country should, on May 1st 1992 at the latest, have established individual handicap transport for the severely mobility-impaired, that extends beyond transport to receive treatment, therapy and suchlike.”439

According to the national government, the reason for establishing the services was to ensure equality in society for people with severe mobility impairments with citizens with no physical impairments regarding transport possibilities. Those who were heavily mobility impaired, noted the government, were in a very difficult situation regarding general social intercourse with family, friends, circle of acquaintances etc, and that every possible technical measure should be used to make their access to traffic communications with others equal to those enjoyed by people with full mobility. The government stated further that, for a:

“small group of people with mobility impairments this problem cannot be solved, even if the buses, which are used for regular traffic become accessible. It is thus a matter of transportation possibilities for people, who cannot get from their own residence to general public transport.”440

According to the parliament around 50 000 Danish citizens were completely barred from utilizing general public transport due to physical impairments. The establishment of the individual transport services for people with severe mobility impairments should be seen as a solidarity measure within the area of traffic policy.441

From the preparatory works on the parliamentary resolution it followed that an ideally designed individual transport services for people with severe mobility impairments required the counties to meet several requirements:

439 Folketingsbeslutning B 60 7 maj 1991.
440 LFF 1991-10-09 nr 37.
441 Folketingsbeslutning B 60 7 maj 1991.
1. the public transport organizations should offer at least 104 tours per year, that is, one return journey every week of the year,

2. the fees should not be substantially higher than the fees for general public transport,

3. the services should also be offered to people who lived in nursing homes,

4. the details of the services should be designed in cooperation with the disability organizations,

5. the services should offer possibilities for journeys beyond the county border,

6. the services should also be offered to people who owned and/or operated specially adapted vehicles,

7. the services should be established independently of already existing special transport systems, such as transportation to healthcare facilities, treatment, therapy and suchlike. That is, the services should only be used as a spontaneous means of conveyance and for leisure purposes such as visits to friends and family, shopping or cultural activities.

The Danish parliament noted that the severely mobility-impaired persons, who would be eligible for the individual transport services, should have the possibility of using the services to at least the same extent as the already existing services in the greater Copenhagen area, which was at the time 104 single journeys each year. The parliament defined people with severe mobility impairments as wheelchair users, and those who used some form of crutches, walkers etc.

As a result of the national government acting on the parliamentary decision, in October 1992 two, now obsolete, Acts came into force. The Act on Changes to the Act on Local and Regional Public Transport outside the Capital Area mandated that every county council (except the organization responsible for greater Copenhagen) establish individual transport services for people with severe mobility impairments, which extends beyond transport to treatment, therapy and suchlike. The Act also laid down that each county council’s operation should provide individual transport services for people with severe mobility impairments in the county. That Act stipulated that every county

---


444 Lov nr 292 af 29/04/1992 om ændring af lov om den lokale og regionale kollektive personbefordring uden for hovedstadsområdet.
council should prepare, in cooperation with the disability organizations, a plan for individual transport services for people with severe mobility impairments. If the county council and the disability organizations could not agree on a plan, the matter could be referred to the Minister for Transport who would then make a decision for the county. The Act on Changes to the Act on Capital Area Public Transport\textsuperscript{445} mandated the very same things (apart from establishing the already established services) for the public transport organization in the greater Copenhagen area. While the new Acts came into force in October 1992, the services were not finally established in every county in Denmark until the summer of 1993.

Neither Act, nor their preparatory works, mentioned any further conditions for eligibility for the services, such as age requirements. Such decisions were left to the discretion of the counties and municipalities. When a study was carried out in 2001 all the counties had age limits for entitlements to use the services. Most counties required the individual to be 18 years of age to be granted an entitlement, but age limits of 15 or 16 occurred infrequently or in special circumstances. The Acts were also silent regarding any further quality demands on the services. The 2001 analysis found that most counties operated with the minimum standard of 104-one-way-journeys-a-year rule. A few counties were slightly more generous, allowing more journeys per year, and a few counties had a similar solution, but allowed individual entitlement holders to purchase supplementary journeys to the basic allotment. The analysis further revealed that journeys were sometimes allotted on a quarterly or monthly basis, expiring if unused, making it virtually impossible for the individual entitlement holder to use the services more frequently at certain periods of the year. Other problems concerned the level of assistance offered to entitlement holders which varied among service providers. The size of fees were also sometimes problematic as in some counties they were considerably higher than the general public transport fees. The analysis also noted that the fees charged were frequently markedly higher than for general public transport, despite the Acts stating that the fees for the services should not be substantially higher than those for general public transport.\textsuperscript{446}

The 2001 analysis also revealed major differences among counties, for example for how far in advance the entitled person had to order the journey. While the idea behind the services was that they should be used for spontaneous purposes it was clear that in 2001 journeys often needed to be booked at least one day in advance, and in several instances three days in advance if the journey involved crossing an administrative border, such as a

\textsuperscript{445} Lov nr 293 af 29/04/1992 om ændring af lov om hovedstadsområdets kollektive persontrafik.

\textsuperscript{446} Center for Ligebehandling af Handicappede 2001.
county boundary. Further, in the instances where a journey could be booked the same day, the time of departure depended on the availability of a car at the time. If there was no car the traveler had to wait. In several counties the traveler had to book the return journey at the same time as the first one, further diminishing any remaining spontaneity in utilizing the services. Most, but not all, individual transport services offered the possibility for an escort to travel with the individual entitlement holder, however, usually only after a special decision had been made. The fees for escorts varied wildly; from being able to travel free of charge to having to pay the same fee as the entitlement holder, or even in a couple of cases, having to pay according to the regular fare meter. Several, but not all, counties allowed children under the age of ten to travel with a parent entitlement holder. For children too, the policies regarding fees and payment varied wildly among services and apparently lacked any connections to corresponding policies in general public transport. The analysis also noted that in most, but not all, counties the entitlement holders could travel to neighboring counties using their regular individual transport service. Most services then applied the same fees as for journeys within the home county. Almost every service offered the possibility of arranging countrywide journeys, that is, from one corner of Denmark to another. Such journeys usually had to be booked several days in advance and again the payment policies varied. Some services even made the entitlement holder pay the full fare meter price for such national journeys.\textsuperscript{447}

In January 2007 a major administrative reform and general overhaul came into effect in Denmark as the number of municipalities was reduced through massive mergers. In total the number of municipalities was reduced from 271 to 98. At the same time the existing thirteen counties were merged into five new regions. The newly formed major municipalities and regions were of course tasked with a number of responsibilities. For instance much of national policy on social welfare and labor was to be implemented in the municipalities. Healthcare and social planning, for example, became major responsibilities for the new regions while the provision of upper secondary education was transferred to the national government. The new regions lack so-called municipal competence, that is, unlike the Danish municipalities they have no mandate and no authority to do anything beyond what they have been explicitly assigned to do by law.\textsuperscript{448} This national political and administrative overhaul was several years in preparation and, among many other things, led to the enactment of unified legislation concerning the individual transport services for people with severe mobility impairments.

\textsuperscript{447} Center for Ligebehandling af Handicappede 2001. See also Center for Ligebehandling af Handicappede 2007.
\textsuperscript{448} Sandberg 2006, p 4 f.
As early as in 2005 the national government took a legislative initiative as the two Acts were amended with the addition of several stipulations and minimum standards under the Act on Changes to the Act on Local and Regional Public Transport Outside the Capital Area and the Act on Capital Area Public Transport\textsuperscript{449}. While these Acts are now obsolete, the stipulations on individual transport services for people with severe mobility impairments were copied verbatim into the current Public Transport Organizations Act\textsuperscript{450} which came into force in January 2007\textsuperscript{451}. As a consequence, the preparatory works for the Act on Changes to the Act on Local and Regional Public Transport Outside the Capital Area and the Act on Capital Area Public Transport are still valid sources of law. The stipulations in the current Public Transport Organizations Act may thus be interpreted in the light of the remarks on the two Acts mentioned above. The national government stated that under the new Public Transport Organizations Act the regulations regarding individual transport services for people with severe mobility impairments, which were enacted in 1992 were to be continued, as were the specifications enacted in 2005.\textsuperscript{452}

With the amendments, from the summer of 2005 until the end of 2006, Section 1 of each of the two Acts mandated that every county, and the responsible organization in greater Copenhagen respectively, should for people over the age of 18 years with severe mobility impairments establish individual transport services which extend beyond transport to treatment, therapy and suchlike. Individual transport services should:

1. encompass a minimum of 104 single journeys per year as close to the front door as possible,

2. be carried out in a suitable vehicle, and

3. include the possibility of traveling to a neighboring county.

Section 1 in both Acts required the booking time for the services to be reasonable. The fees for individual transport services should not be substantially higher than those for general public transport. The Acts also required the county councils, and the responsible organization in greater Copenhagen, to involve the disability organizations in framing individual transport services.

\textsuperscript{449} Lov nr 580 af 24/06/2005 om ændring af lov om den lokale og regionale kollektive personbefordring uden for hovedstadsområdet og lov om hovedstadsområdets kollektive persontrafik.

\textsuperscript{450} Bekendtgørelse nr 412 af 11/04/2010 af lov om trafikselskaber.

\textsuperscript{451} Lov nr 582 af 24/06/2005 om trafikselskaber.

\textsuperscript{452} LFF 2005-02-24 nr 83.
The national government stated that the 2005 legislation was designed to specify the minimum demands which can be applied to individual transport services for people with severe mobility impairments. The idea was to establish services, which as far as possible adhered to the principles of public transport. The services should compensate for public transportation being accessible only to a certain extent, and that general public transport, even if it in time becomes more accessible, to a certain extent can only be adapted to the needs of people with severe mobility impairments. The services are provided for people with severe mobility impairments, but do not include other groups of people with disabilities, for example people with psychological or visual impairments.453

4.4 Special Public Transport for People with Disabilities in Norway – from Voluntary Operations to County Services

In the late 1970s the Government’s Commission on Transport for People with Disabilities454 noted that the design of existing public transportation made special demands on those using it. Mobility, visual and hearing impairments, and also other impairments, effectively barred people from utilizing general public transport. The existing public transport system was especially disabling for people with more comprehensive physical or psychological impairments. The Commission noted that for some people the difficulties were so great that they could be seen as being completely prevented from using many of the transport systems which served the public. The problems were particularly notable on shorter journeys using local public transport. The Commission also noted that roughly 120,000 Norwegians, or 3% of the population at the time, were either completely excluded from public transport, or could only use it with considerable difficulty. Regardless of existing ambitions to adapt and increase accessibility to vehicles, bus stops, stations and the surrounding environment, the Commission stated that having a large group of people with no access to transport, unless special transport was available, could be considered a permanent situation.455

Various transport services for people with disabilities started in different places in Norway, mainly as individual voluntary initiatives on behalf of organizations or institutions, such as nursing homes or special schools. As time went by, several operations which had started out as charities began to

453 LFF 2005-02-23 nr 81.
454 NOU 1979:27.
455 NOU 1979:27, p 7.
receive public funding and municipalities in many instances took on full responsibility for several of the voluntary transport services. Some larger municipalities established their own special transport centers which organized and coordinated special transport for people with disabilities within the respective municipalities. Such municipal transport centers were usually established by the municipal social services and the control of them typically involved representatives from the disability organizations and traffic companies. In other municipalities the municipal social services contracted the local private taxi booking system to handle special means of transport. Other forms of organization also existed. When the various and varying services were analyzed in 1980 around 1/3 of the municipalities, comprising approximately 2/3 of Norway’s population at the time, had organized some form of special transport services. For example, in the capital area of Oslo around 5% of the population had access to special transport services, while around 1% of the population in those other municipalities where services were available at all had some form of access. Thus, at the time special transport services varied considerably in overall design and organization, in availability to private individuals and in the quality of the services.456

The Government’s Commission on Transport for People with Disabilities discussed initiating more comprehensive special transport services and strengthening public responsibility for them. The Commission stressed the importance of making special transport services available throughout Norway and suggested that the services generally should be mainstreamed into the transport sector. The Commission formulated the following guiding principles for special transport services:

- The authorities who are responsible for general public transport shall also be responsible for the transport of people with disabilities.

This could be achieved under the (now obsolete) Public Transport Act457 which gave the counties considerable authority and regulating powers over all special transportation. As the supervising authority the Ministry of Transport and Communication would draw up guidelines on, among other things, prioritization among different categories of transport providers, conditions for authorizing transport providers, technical demands regarding vehicles etc.

---

457 Lov 4 juni 1976 nr 63 om samferdsel.
• Transport services specially adapted for the transportation of people with disabilities should be integrated into society’s other transport systems, and
• providers of transport for people with disabilities should be professional operators.

These objectives would be achieved, said the Commission, simply by letting private taxi companies have overall responsibility for the transport of people with disabilities. The actual journeys would be very much like any ordinary taxi rides. Mainstreaming and integration would also occur as specially adapted vehicles, when not used to transport people with special needs, could be used for ordinary taxi journeys.

• The disabled person should not, through higher fares and inferior transport services, be considerably worse off than the rest of the population.

The Commission thought that this would not be achieved by mainstreaming as such. Formal equality would be achieved if people with disabilities paid the normal metered cost for the journey, just like everyone else traveling by taxi. The problem was then twofold: one, the traveler must be somehow relieved of the financial burden of having to use taxis, a relatively expensive form of travel from necessity and not individual choice. Two, the transport providers must be given the possibilities of obtaining and maintaining special equipment. The Commission went on to discuss two main designs for handling these problems and supporting the services:

1. One solution was to directly subsidize the services, that is, the transport providers. This had the advantages of strengthening the taxi providers and mainstreaming the services with general public transport as the fares did not need to be much higher than the cost of an ordinary bus ticket. Another advantage was that a complete administrative normalization would be achieved as the same authorities would be responsible for both special and general public transport. This in turn, the Commission believed, would make use of the services attractive and would probably increase activities, and thereby participation in society, among people with disabilities. The Commission also warned, however, that the services could indeed become too attractive, leading to a huge number of journeys and high costs for the public. The Commission also argued that complete mainstreaming could not be achieved anyway until all general public transport in the localities could be used by people with disabilities. Providing affordable individual door-to-door services by taxi would undermine the incentives to adapt general public
transport and to increase its accessibility and, in time, the services might instead expand to include more groups as general public transport continued to exclude people by its inaccessibility.

2. Another solution was to directly support the traveler, that is, the passenger would receive some kind of monetary compensation while paying the full metered price. This had the advantage of being cheaper for the public as the monetary benefits were directed to the travelers who the Commission thought would weigh their possibilities and generally choose the most rational means of transport in each instance. Also, direct support to the traveler was considered less controlling, allowing greater flexibility in traveling. However, noted the Commission, mainstreaming would hardly be achieved as people with disabilities would, out of necessity, have to pay considerably more for transport, even though they would be compensated partly or in full. There would also be no administrative normalization as such benefits would be handled in a special administrative unit, albeit quite possibly within the existing public transport administration.

- Any possible subsidized transport services for those unable to travel by public transport should be financed in the same manner as other, subsidized means of transport.

The Commission noted that introducing direct subsidies to private taxi companies and suchlike for private individual journeys would mean a break with the existing transport policy where subsidies were paid only to general public transport. The Commission also concluded that for the future it was desirable to invest directly in establishing special transport services for people with disabilities throughout Norway, and that such services were a necessary prerequisite for achieving the other objectives for the care and integration of people with disabilities. As far as possible people with disabilities should also travel by ordinary general public transport, and the Commission therefore stressed that the work on technical adaptation regarding buses, trains, aircraft and ships should be intensified. For entirely local journeys, however, the Commission foresaw the existence of a permanent group of travelers who would need door-to-door services.

Regarding the details concerning these improved and mainstreamed services the Commission particularly stressed the need for:

---

“a common formula for approval of individuals eligible to use transport services for people with disabilities for the entire country. This will be the responsibility of the Ministry of Transport and Communication in consultation with the transport providers and the disabled people’s organizations [...] Approval of eligible persons will mainly have to take place after an evaluation of the applicants’ impairments in relation to the transport system. This will principally be based upon criteria of a socio-medical nature”.

The Commission described its approach to special transport services mainly as a transport and communications issue. At the same time, however, it envisioned an organization of services where the municipalities assumed overall responsibility, despite the fact that the counties were generally responsible for the public transport sector.

In 1986 the parliament finally decided that all responsibility for providing and regulating special transport services for People with Disabilities should be transferred to the counties as of January 1988. In the view of the parliament, the services were mainly a matter of transport and communications. As the counties had the main responsibility for general public transport they should also have the responsibility for special public transport for people with disabilities. It was argued that this would create incentives for the counties to increase accessibility to general public transport. Further, county services – as opposed to municipal services – would make it easier to travel between different municipalities and also serve to harmonize the quality and extent of the services between municipalities within the same county. The parliamentary decision was made against the backdrop of mainstreaming and sector responsibility. The parliament stated that in transport matters the group of people eligible could be defined as such persons who could not use general public transport without considerable difficulties. The parliament noted that there are many types of disabilities, both physical and psychological, and that the definition was neither exact nor unambiguous in character, and concluded:

“To what degree a person shall be categorized as impaired will not only be dependent on the medical criteria which form the basis for it, but also on the design of the environment.”

The parliament also noted that the definition of disability regarding transport meant that not only people with mobility impairments would be included, but

---

461 NOU 1979:27, p 40.
also an ever growing number of elderly people. This would increase the
demand for better accessibility and for adapting all kinds of transportation.
The parliamentary committee reported that, while no figures were available
from Norway on the need for special public transport, the Norwegian
government had extrapolated figures from Sweden, indicating that around
four to five percent of the population could be defined as disabled in relation
to general public transport. The parliament noted that transport is a necessary
condition for participation in a number of areas in society. Travel must be
undertaken in order to obtain an education, participate in working life,
business activities, and take up leisure activities like vacation journeys,
cultural activities, etc. The objective should be for people with disabilities to
participate in these areas in society to the same extent as others.⁴⁶³

The parliament noted that the government did not find it either appropriate,
or necessary, to propose legislation concerning the local authorities’ various
responsibilities for organizing special public transport and adapting general
public transport for people with disabilities. Despite increased efforts to
improve mainstreaming and accessibility to the general public transport
systems, the parliament concluded that there was a need for local authorities
to take on the responsibilities for organizing special public transport. As a
consequence of their increased responsibilities, the local authorities would
receive more government subsidies to cover their efforts to adapt and increase
accessibility to general public transport and to fund special transport. The
parliament made a specific point of the sector responsibility, stating that:

“society’s regular service system is also fully responsible for people
with disabilities, and transport services for people with disabilities
should be integrated into society’s other transport systems.”⁴⁶⁴

Local self-governance was not to be infringed upon, and the parliament agreed
with the government that the local authorities should be free to use
government subsidies as they saw fit, and that the national level of authority
would not specify exactly how much of the funds would have to go to special
transport services for people with disabilities as long as such services were
properly organized in the counties. The parliament noted that while it had
considered legislating for the right of disabled people to special transport, in
the end no such legislation was to be proposed.⁴⁶⁵

Following the parliamentary decision in 1986, by 1988 all counties had organized special transport services for people with disabilities. The counties established the services and assumed responsibility under the Public Transport Act, which gave them general authority to administrate and regulate all public transport within the respective counties, including special public transport.\textsuperscript{466}

Because the services were seen as both social services and transport services, the implementation of mainstreaming and sector responsibility regarding them came into question. The Government’s Commission on the Distribution of Tasks between National Government, Region and Municipality stated that as far as most counties are concerned, the services in practice mean reimbursement of transport costs when using taxis or specially adapted cars, and that the services are only to a small extent a part of the general public transport system.\textsuperscript{467} The travelers’ individual payments correspond to ordinary public transport tickets. The Commission concluded that special transport services for people with disabilities exist in a legal and administrative grey area, and that the services:

“stand outside the general public transport system. The services are just as much a part of the public primary welfare and care services.”\textsuperscript{468}

\textsuperscript{466} NOU 2000:22, p 276.
\textsuperscript{467} NOU 2000:22, p 609.
\textsuperscript{468} NOU 2000:22, p 278.
5 Transport Services as Social Rights in Sweden

Sweden has two types of transport services available for people with disabilities. The special transport services are local services, which provide special public transport for local journeys in everyday life. The national special transport services are for longer journeys within Sweden, and are performed by either special public transport services, or by general public transport.

5.1 Special Transport Services – a Rights/Duties Relation?

Under Section 3 of the special transport services Act every municipality is responsible for providing special transport services within the boundaries of the municipality for the members of that municipality. If there are special circumstances the municipality is also responsible for providing services between the municipality and another municipality.

Under Section 4 of the Act a municipality can choose to delegate responsibility for the service to the Regional Public Transport Authority. Section 6 in the Act states that special transport services may be used by such persons as after application have been deemed entitled to it.

The language in which the formal duty of the municipalities to provide services and issue entitlements is expressed is normatively stronger than that used to describe the individual right to an entitlement. A formal rights/duties relationship between the municipality and the entitlement holder regarding access to services can nonetheless be seen.

In 2006 Section 3 of the Act was amended to include a requirement that the municipalities provide special transport services of good quality. According to the national government, this Section 3 requirement is meant to be understood in comprehensive terms. Examples of good quality in the services, as mentioned by the national government, are correct behavior, good traffic safety, reasonable times and timing. The Government’s Commission on Special Transport Services stated that whether a municipality provides

\[\text{\cite{Lag(1997:736) om färdtjänst.}}\]
\[\text{\cite{Lag(2006:1114) om ändring i lagen (1997:736) om färdtjänst.}}\]
\[\text{\cite{Prop 2005/06:160, p 245 f.}}\]
services of good quality is not a suitable question for the courts to decide.\textsuperscript{472} The national government concurred stating that it is primarily a question for the municipalities to consider when awarding contracts to service providers.\textsuperscript{473} This strengthens municipal self-governance, and avoids any authority being tasked with upholding national standards for what might be considered good quality in the services.

Section 9 of the Act stipulates that entitlement to use special transport services may be granted either for a specified time period, or until further notice. Entitlements may also be issued with reasonable limitations concerning:

1. The means of transportation
2. The area within which journeys may be made
3. The number of journeys allowed under the entitlement

Section 9 also states that when there are special conditions, the entitlement may be further restricted. In 2006, Section 9 was amended to state that journeys considered to be essential for the entitlement holder may be limited in number only for extraordinary reasons.\textsuperscript{474}

Municipal self-governance is powerful regarding the possibilities of limiting the scope of individual entitlements to special transport services. The administrative courts often defer to municipal self-governance, and are reluctant to challenge the scope of entitlements regarding specific conditions, provision and limitations of services under Section 9 of the Act.\textsuperscript{475} The resulting variations between different municipalities can be important from an individual perspective. Some municipalities have restrictions in the number of journeys allowed within a certain time frame; while others allow an unlimited number. Some municipalities only allow journeys within the respective municipality. Most, however, allow journeys to immediately surrounding municipalities. Some counties or regions where the municipalities have coordinated their special transport services on county or regional level by delegating their responsibilities to a Regional Public Transport Authority, allow journeys across the entire county or region. Some municipalities or Regional Public Transport Authorities might allow journeys

\textsuperscript{472} SOU 2003:87, p 92 f.
\textsuperscript{473} Prop 2005/06:160, p 245 f.
\textsuperscript{475} See for example Case 4377-11 Administrative Court of Appeal in Stockholm.
around the clock, some will not allow any late at night and others again will only allow them during the hours that regular general public transport runs.476

From case law it follows that provisions under Section 9 of the Act offer the possibility for limitation of individual entitlements which the municipalities may, or may not, choose to impose. In one important case, the Supreme Administrative Court had to decide whether Section 9 implies that a municipality has an obligation to accommodate individual requirements in providing the services. The appellant, who suffered a severe psychiatric illness which impaired the ability to interact with other people, wanted to be able to ride with only one specific driver. The Supreme Administrative Court found that being able to regulate the services did not place any duty whatsoever on a municipality to issue any provisions that would extend the services beyond that which is otherwise required by the Act, or to adapt the services to accommodate the particular needs or wishes of an individual entitlement holder. According to the Court, the motive behind allowing the municipalities’ to issue provisions is to give them the means of legally limiting and restricting the scope of the entitlement. The municipalities are free to adapt the services to the special needs of an individual entitlement holder, but only if they wish to do so.477

Sections 10 and 11 of the Act give the municipalities, and the Regional Public Transport Authorities when applicable, the right to charge a fee for the utilization of special transport services. This creates a corresponding duty for the traveler to pay the fee. The fees must be reasonable and must not exceed the provider’s prime costs for the services. According to the national government the municipalities are to be given wide latitude for self-governance concerning the fees, and differentiation of fees between hours of services, or between municipalities, lie within this latitude.478 The actual fees for the services vary considerably. Both the individual charge for a journey, and the general principles behind the fees, differ among municipalities.479

Section 12 of the Special Transport Services Act states that an entitlement may be withdrawn, should the prerequisites for the entitlement no longer exist. An entitlement may also be cancelled should the entitlement holder be guilty of

477 RÅ 2000 ref 8.
serious or repeated violations of the provisions and conditions that apply to
the special transport services.

Section 7 of the Special Transport Services Act contains a general exception to
the municipal duty to provide services, in that an entitlement does not include
transport services that for some other reason are being paid for by the public.
An example of this general exception is school transport for children, another
is the journeys to and from most healthcare facilities. Under the Healthcare
Journeys Reimbursement Act the respective county or region is responsible
for organizing, or reimbursing, individuals for so-called healthcare journeys.
Because healthcare journeys are already paid for by the public, an
entitled person cannot use special transport services to travel to most
healthcare facilities. The Healthcare Journeys Reimbursement Act lays down
a set of arrangements, provisions, conditions, and principles for fees that
differ from the special transport services. A person entitled to special
transport services thus has a duty to communicate clearly the purpose of a
journey, and to ensure that this fits into the existing bureaucratic framework.
This individual duty means that an entitled person must be ready to give
information about the specific purpose of any journey when making travel
arrangements. Such information might be considered sensitive from the
perspective of personal autonomy and integrity.

While special transport services may certainly be used for travel between
home and workplace, they are not available for business journeys, or any other
official business travel on behalf of one’s employer. The Special Transport
Services Act does not mention business journeys at all, and the preparatory
works and other traditional sources of law are also silent on the matter. This
may be seen as a consequence of the service’s roots in social policy, and later
in social service legislation, and that the services were considered a social
welfare benefit. In case law, however, peculiar legal arguments for excluding
business trips from eligibility for services have surfaced. In one case, the fact
that a self-employed man could make tax deductions for his business journeys,
was considered sufficient to refuse entitlement to special transport services
for these journeys. The upper court could cite neither preparatory works, nor
statute or case law in support of this strange argument. The lower court
in the case, instead of the tax argument, invented the argument that special
transport services could only be granted for private purposes. The lower court

481 ”Sjukresor” in Swedish.
483 See also Freij 2012, p 157.
484 Case 4160-09 Administrative Court of Appeal in Gothenburg.
could not find any legal support for this finding either. The confusion shown in this case illustrates that there is a strong tradition in the legal culture of not granting entitlements for business trips, but also that there is really no support for this tradition in any normative source of law.

5.2 National Special Transport Services – a Rights/Duties Relation?

Section 1 of the National Special Transport Services Act\textsuperscript{485} states that a municipality, under the conditions stated in the Act, shall provide compensation for travel costs for people who, because of serious and lasting impairment, must travel in an especially costly manner. Section 4 of the Act stipulates that the services may be used by such persons who, after application, have been granted entitlement to do so. As the case of the Special Transport Services Act, the language used with reference to the duty is normatively stronger than that which refers to the individual right. Nevertheless, a rights/duties relationship exists between the municipality and the entitlement holder regarding access to services.

Section 8 of the Act states that when national special transport services are used the entitlement holder shall pay an individual fee equivalent to the normal travel costs using public transportation. The formal duty for the entitled person to pay such a fee is thus very clear. To regulate the fees, the national government has issued the Individual Fees for Travel with National Special Transport Services Decree\textsuperscript{486}. Under Sections 2 and 3 of the Decree, the fee which the entitled individual has to pay for each journey is calculated on the basis of the distance between the points of departure and arrival, according to a fixed set of parameters. Under Section 3, the fee is capped at SEK 755, meaning that in no case will the traveler have to pay more than SEK 755, regardless of the actual cost of travel. The national government has noted that normal travel costs are to be understood as the average cost of second-class travel by train, including costs for seat reservations and transfers.\textsuperscript{487} On the meaning of normal travel costs, the national government has stated:

“The concept of normal costs for travel has so far been linked to the costs of second-class travel by train. Such a pricing of individual fees, however, will not be possible after the deregulation of rail traffic [...]”

\textsuperscript{485} Lag (1997:735) om riksfärdtjänst.

\textsuperscript{486} Förordning (1993:1148) om egenavgifter vid resor med riksfärdtjänst.

It is, however, important that the individual fee in the future can also be based on a common perception of normal travel costs.  

The Decree has not been changed since 1996, and individual fees have, over time, lost their links with the cost of a second-class rail ticket. However, this point of reference still tends to surface in various normative sources whenever individual fees are discussed.

The general guidelines concerning the national special transport services were issued in 1989 by the now defunct National Transport Council, an authority which exercised supervision over the national special transport services (but not over the special transport services). These general guidelines are still in force and continue to serve as an important normative instrument.

The general guidelines state that entitlements to national special transport services under ordinary circumstances shall be issued for a specific period of time. Such an entitlement may be issued for as long as the relation between the applicant’s impairment and the accessibility of the public transport system is expected to remain the same. No entitlement is to be issued for a period longer than three years. However, a municipality may issue, or refuse, entitlements to use the national services on a journey by journey basis. This means that an entitlement is not valid within a given time frame but only for a given journey by specified means of travel. The general guidelines state that as a rule entitlements for individual journeys need only be issued for those by taxi or by specially adapted vehicle. When travel is by public transport, as a general rule, entitlements should be issued for a specific time period.

As the majority of journeys using national special transport services entitlements are those by taxi or by specially adapted vehicles, the exception to the rule becomes rather the rule to the exception, and means that, for most applications for entitlements to use the national services, the municipalities can grant or deny entitlements on a journey-by-journey basis. This is known to create problems for people whose municipalities take a long time to process their applications. A municipality’s tardiness may create a situation where the whole purpose of the intended journey, for example a meeting or a family occasion, may already have taken place before the decision is finally made.

---

489 See for example Prop 2005/06:160, p 262.
491 Transportrådet 1989.
492 Transportrådet.
494 See for example Trafikanalys 2014:7, p 92.
made. In such instances it does not matter whether or not the municipality or the court finally grants an entitlement, as the potential traveler cannot use the services for the intended purpose anyway. In a complaint before the Parliamentary Ombudsmen a woman had repeatedly applied for entitlements under the National Special Transport Services Act to go to a certain destination by taxi. As she was initially refused her entitlement she appealed to the County Administrative Court only to have the court remove her appeal from the docket as the time of departure for the intended journey had long since passed. The court did, however, issue a statement to the effect that she should have been granted an entitlement to travel by taxi and that the municipal decision was materially incorrect. When she applied for future journeys by taxi to the same destination the whole cycle was repeated, with the municipality, though aware of the previous court decision, refused her applications to travel by taxi. Her appeals were then handled too late to have any impact and were eventually removed from the court’s docket. The statement by the court on the earlier application was not considered binding on the municipality in the case of a new application. The Ombudsman stated that:

“two similar cases must not necessarily be identical. Even though one and the same applicant applies for national special transport services to the same destination on repeated occasions may, for example, the applicant’s health status and the means of travel and the quality of these have changed. A new application thus presupposes under all conditions a renewed consideration taking note of the current circumstances at hand.”

According to case law, statements made by the court which are not part of a final verdict or a final decision on a case properly before the court, are not as a rule binding on the parties, and do not carry any independent force of law. In the instances above, the person who applied for entitlement to use national special transport services was denied not only the right to the services, but was also in effect denied access to justice. This indicates that the individual right to services, as opposed to the municipal duty to provide services, is very weak when a municipality chooses to ignore the reason for a journey.

495 JO 2008/09, p 436.
496 RÅ 2006 ref 21.
5.3 Who Is Eligible for the Special Transport Services?

Section 7 of the Special Transport Services Act states that an entitlement to use special transport services shall be granted to those persons who, for reasons of impairments which are not of a temporary nature, have considerable difficulties in moving about on their own or traveling on general public transport.

5.3.1 Impairments which Are not of a Temporary Nature

The first eligibility criterion in Section 7 of the Act, impairments which are not of a temporary nature, has been developed in case law, especially by the Supreme Administrative Court.

In one important case the question before the Supreme Administrative Court was whether an impairment which was estimated to cause severe but temporary disability for an assessed period of three to six months was sufficiently “not temporary” to be grounds for an entitlement to use special transport services. The municipality had issued regulations stating that impairments which are not of a temporary nature should be understood as impairments lasting longer than six months. The court noted that a majority of Swedish municipalities used such a six month limit, but also that around 25% of the municipalities instead used a three months limit. There was no guidance in the preparatory works. The court noted, however, that obsolete regulations from the national Board of Health and Welfare on national funding for special transport services under the old Social Services Act had used a three month limit regarding similar issues in the past. Further, the court found that elsewhere in Swedish social law, specifically in preparatory works for the old Social Security Act497, it was stated that temporary support for increased travel costs due to an impairment should usually not be granted for a period longer than 90 days, as an impairment lasting more than 90 days would be considered not as temporary but as long term impairment. In the final order, the court stated that an impairment causing disability, lasting three to six months, cannot be viewed as temporary. A person with such an impairment shall thus be entitled to use special transport services.498

497 Lagen (1962:381) om allmän försäkring.
498 RÅ 2007 ref 27.
5.3.2 Considerable Difficulties

The second eligibility criterion in Section 7 of the Special Transport Services Act, considerable difficulties in moving about on their own or traveling on general public transport, is entirely relational and contextual in nature. When the Special Transport Services Act came into effect the national government stated that the intention was not to increase the number of eligible persons, compared to the situation under the old Social Services Act. Rather, the government’s explicit objective was to make general public transport more accessible, so that the need for special transport services would decline, as more people would be able to use a more mainstreamed general public transport system. This makes the considerable difficulties criterion dependent on the specific accessibility of the available general public transport in each individual case.

The interpretation of this criterion was a major cause of appeals against municipal decisions to refuse entitlements during the first few years of the Act’s existence. Most case law regarding this criterion, however, has been decided by the lower courts, following a formula established by the Supreme Administrative Court in two important cases concerning car allowance. These two cases concerned the interpretation of the now abolished Handling of Applications for Car Allowance to People with Disabilities Act and the now abolished Decree on Car Allowance to People with Disabilities. The old Decree used a criterion very similar to the considerable difficulties in moving about on their own or traveling on general public transport criterion in Section 7 of the Special Transport Services Act. In the first case the Supreme Administrative Court found that the loss of both hands and major parts of both arms constituted an impairment that caused considerable difficulties in moving about on his own or traveling on general public transport. In the other case the Supreme Administrative Court found that immobility of the left arm and hand and partial palsy in the left leg also constituted such an impairment. These cases are also considered to have important precedent value for the interpretation of the considerable difficulties criterion in Section 7 of the Special Transport Services Act. This case law makes it clear that considerable difficulties is not a harsh standard, nor does it require the individual to be completely immobilized. Any impairment that seriously

---

503 RÅ 1995 ref 49.
504 RÅ 1996 ref 46.
affects the ability to walk, or to take hold of something, is sufficient to meet the criterion.

In the preparatory works for car allowance (which the Supreme Administrative Court considered in the cases mentioned above) the national government noted that the basic requirement is that the impairment causes considerable difficulties, and that this applies when a person has considerable difficulties traveling on general public transport. This would include, for example, people who are dependent on assistive aids, such as wheelchairs, walkers or canes when moving about. Considerable difficulties in moving about can also occur in conjunction with severe asthmatic or other similarly serious conditions. The criterion is entirely dependent upon the nature of the impairment. Insufficient or underdeveloped general public transport in an area is never in itself sufficient to meet the considerable difficulties criterion.505

If the considerable difficulties only exist in relation to getting to general public transport, but not while actually traveling by it, the municipality can, as determined by case law under Section 9 of the Act, restrict the entitlement to cover only services to and from the nearest point of connection to general public transport, for example a bus stop.506

Case law has established that age is not in itself of much interest when evaluating whether an applicant meets the considerable difficulties criterion. When someone, regardless of age, meets the criterion, that person has the right to entitlement.507 Section 7 was amended in 2006 to state that if an applicant is below 18 years of age, any decision about entitlement must take into consideration the situation of the child with the general situation of other children of the same age. The government’s motive for the amendment was that surveys had shown that several municipalities restricted child entitlements, and certain municipalities simply refused such entitlements altogether, or that entitlements were only granted when there were special reasons. The national government indicated that when a child experiences considerable difficulties in moving about, or traveling on general public transport, and those difficulties are not caused by low age per se, but instead by an impairment, then this is not a parental responsibility but one of the larger society and entitlement to use special transport services should be granted to the child. The government stated that if a child with no disabilities, and in a similar situation, could be expected to move about on its own or use

506 RÅ 2009 ref 74 I and II.
507 See for example RÅ 2008 ref 88 I and II.
general public transport, then parental responsibility is not a proper cause for refusing entitlement.508

5.3.3 Traveling with Someone Else

Section 8 of the Special Transport Services Act stipulates that if the applicant needs an escort during the journeys the entitlement shall also be valid for the escort. This criterion of being needed during the journey is considered important by the national government, and the escort must be needed to provide assistance above and beyond that which could normally be expected from a driver.509 The need for an escort must be in direct connection with the travel. For example, someone to guide the traveler on arrival at the destination, or someone to assist immediately before or after the journey, is not considered sufficient reason for granting entitlement to an accompanying escort during journeys.510 The criterion regarding an escort during a journey has been applied strictly in case law.511

The possibility for an entitled person to travel with someone who is not an escort, is not regulated in the Act. Instead, the municipalities are given a wide latitude to regulate this as they see fit. According to the national government, a majority of Swedish municipalities voluntarily allows a co-traveler to ride with an entitlement holder, provided that, at the given time of departure, there are enough seats in the vehicle and that the co-traveler pays for his or her journey. When the entitlement holder is a parent most, but not all, municipalities allow their children, up to an arbitrary age, to travel with them using special transport services.512

5.4 Who Is Eligible for the National Special Transport Services?

The five cumulative eligibility criteria, which must be in order for the municipality to grant entitlement to use national transport services by the

508 Prop 2005/06:160, p 249 f.
511 See for examples Case 4800-02 Administrative Court of Appeal in Stockholm or Case 5759-13 Administrative Court of Appeal in Gothenburg.
512 Prop 2005/06: 160, p 253 f.
municipality, are set forth in Section 5 of the National Transport Services Act. Section 5 stipulates that an entitlement shall be issued if:

1. due to the applicant’s impairment the journey cannot be made by general public transport at normal travel cost or cannot be made without an escort,
2. the purpose of the journey is recreational or leisure activities or some other private matter,
3. the journey is made within Sweden and from one municipality to another municipality,
4. the journey is by taxi, a specially adapted vehicle or using general public transport together with an escort, and
5. the cost of the journey is not for some other reason covered by the public.

According to the national government no changes in the criteria were intended compared with the immediate predecessor to the Act, the Act on Municipal Administration of National Special Transport Services\(^5\).\(^6\) However, the wording of the fourth criterion was slightly altered so that, under the new Act, a journey using general public transport could only be made with an escort. Thus, in any case where the individual does not need an escort to travel by general public transport no entitlement to use the services can be issued. According to the national government, as general public transport supposedly becomes increasingly accessible, the number of those eligible for entitlements to use the national special transport services will decrease.\(^7\) However, the significant question of how a municipality is meant to decide when general public transport accessibility has reached such a level that a certain individual may be considered not to need an escort, but can travel on his or her own, has not been discussed by the government.

Section 5 of the National Special Transport Services Act was amended in 2006 to state that if an applicant is under 18 years of age, the decision to grant an entitlement must take into consideration the situation of other children with no disabilities of the same age as the applicant. As with special transport services, if a child without disabilities and in a similar situation could be expected to moving about on its own using general public transport while the

---

\(^5\) Lag (1993:963) om kommunal riksfärdtjänst.
\(^7\) Prop 1996/97:115, p 54.
child in question could not, then parental responsibility is not a proper reason for refusing entitlement.\textsuperscript{516}

Under the second criterion of Section 5, the stated purpose of the journey is of great importance in deciding eligibility. Recreational or leisure activities are not usually problematic, but some other private matter might be.\textsuperscript{517} The preparatory works are silent on this part of the criterion. In case law, travels in connection with holding elected office in a disability organization, have been considered as some other private matter,\textsuperscript{518} but not travels in connection with privately financed care.\textsuperscript{519} What constitutes some other private matter is unclear, and does not seem to be based on any transparent legal principle.

Municipalities may regulate the detailed procedures regarding booking and ticketing. They may also regulate the time needed for applications to be handled, that is, how long in advance of the intended journey the application must be submitted to the municipality. The general guidelines state that, while it is important for all applications to be dealt with as quickly as possible, it is also important for applicants to apply for services as early as possible. The time needed to process applications may vary from case to case depending upon the circumstances but ought never to exceed two weeks. Decisions regarding journeys caused by emergencies or extraordinary circumstances, for example sickness in the family or when a person is admitted to a course or a conference at short notice, should be prioritized and made quickly.\textsuperscript{520}

Under Section 7 of the National Special Transport Services Act an entitlement may be issued with conditions concerning the means of travel. According to the general guidelines entitlements shall be issued for the method of travel which, with regard to the requirements of the traveler, is the least costly. They suggest that:

- Train and coach are always the cheapest alternatives
- Planes, even when traveling with an escort, are usually cheaper than long taxi rides
- Specially adapted vehicles are usually the most expensive means of conveyance

\textsuperscript{516} Prop 2005/06:160, p 249 f.
\textsuperscript{517} Freij 2009, p 42.
\textsuperscript{518} Case 2670-04 Administrative Court of Appeal in Sundsvall.
\textsuperscript{519} Case 3638-07 Administrative Court of Appeal in Jönköping.
\textsuperscript{520} Transportrådet 1989, p 12.
The general guidelines conclude that entitlements, therefore, shall be issued for travel by train, air, coach or boat in regular service, possibly with an escort, if the traveler considering the impairment can travel using such means of conveyance.521

An entitlement granted for a certain period of time should encompass all the means of travel necessary, and can therefore entitle the individual to use several different means, for instance train or plane with an escort, taxi without an escort, etc. If the applicant can travel by air but not by train or bus, then the entitlement should be issued for plane and taxi or specially adapted vehicle, and so on. In the case when entitlement is issued on a journey by journey basis it is always to be issued with conditions stating whether a regular taxi cab or a specially adapted vehicle is to be used. The general guidelines note that the need to travel by taxi or specially adapted vehicle must be dictated by the traveler’s impairment and not lack of public transportation.522

In cases when an entitled individual travels extraordinarily often, conditions may in certain instances be issued by the municipality to limit the number of journeys allowed within the time frame of the entitlement. The municipalities are not, however, to inquire into the individual’s perceived need of travel. The general guidelines state that only if the pattern of travel deviates significantly from what could be viewed as normal may a possible limitation on the number of journeys come into question. In addition, a high frequency of travel should not mean that a limitation is automatically imposed. If the traveler has a reasonable need to travel exceptionally often no limitation shall be imposed. This could apply for instance to a person who travels often in their capacity as an elected representative in an organization.523

Under Section 6 of the Act, if the applicant needs an escort during the journey, the entitlement shall also be valid for the escort. According to the general guidelines an escort is a person who accompanies the traveler because the latter needs assistance during the journey, as compared to a co-traveler who is someone who travels with the entitlement holder but not because of any special needs during the journey. The cost for an escort may be covered in situations where regular public transport staff cannot be expected to assist the traveler to the full during the journey. Again, as in the case with special transport services, the most important criterion regarding the need for an escort is help needed during the journey. The need for assistance before the journey, for example with packing, getting dressed and generally getting ready

521 Transportrådet 1989, p 5.
to go, or the need for assistance at the point of arrival, are not considered sufficient reason for granting entitlement to an escort. Anyone able to assist may be an escort, and in extraordinary circumstances there may be entitlement to more than one escort. The national special transport services cannot, however, be involved in finding suitable escorts.524

A person who is granted entitlement to travel with an escort under the National Special Transport Services Act, but who cannot find a suitable escort, may apply to the municipality under the Social Services Act, but there are no guarantees that an escort will be granted under that Act. In one case a woman was granted entitlement to travel on condition that she went by train or coach with an escort. The municipality, however, did not supply her with an actual escort. As she could not find an escort on her own she appealed to have the entitlement changed to let her travel alone by taxi. Her appeal was denied on the grounds that under the National Special Transport Services Act the municipality was only obliged to issue the formal entitlement for her and an escort, as she could travel the distance with such an escort. The municipality was not, however, obliged to provide her with an escort.525 From an individual perspective this is an absurd situation where a person is formally granted the right to a service, yet is in fact denied the material right to it.

5.5 Impact of Funding on the Right to Special Transport Services

According to Section 3 of the Special Transport Services Act the municipality is responsible for providing services for its inhabitants. Under the Act, any applicant who meets the eligibility criteria in Section 6 will be granted an entitlement. The right to an entitlement as such is therefore not dependent on the actual municipal resources available. Under Section 9 of the Act entitlements may be granted for a certain time period or until further notice. Thus, there is always the possibility for a municipality to limit the duration of an entitlement, and restrictions and conditions to an entitlement under Section 9 may be issued for budgetary reasons.526 This impacts on the individual right to services and weakens the right.

This individual right was, however, strengthened in 2006 when Section 9 of the Act was amended to state that such journeys which might be considered

525 Case 8339-03 Administrative Court of Appeal in Gothenburg.
essential to the entitlement holder may be limited in number only for extraordinary reasons. The main motive behind the amendment, according to the national government, was that many municipalities were too strict in allowing a proper number of journeys. The cause was assumed to be municipal financial concerns. Examples of journeys which might be considered essential include those to the workplace, places of study such as universities or vocational schools, nurseries, kindergartens, etc.\textsuperscript{527} In an important decision, the Supreme Administrative Court again weakened the individual right, by ruling that journeys to leisure, exercise and recreational activities are not to be considered essential, even if they are considered very important in the everyday life of the entitlement holder and crucial for their health and wellbeing.\textsuperscript{528} Only for travel in connection with work or study is the individual’s right to services protected from the impact of local finances.

### 5.6 Impact of Funding on the Right to National Special Transport Services

According to Section 1 of the National Special Transport Services Act the municipality is responsible for providing compensation for the costs of the journeys and under Section 4 the very same municipality is obliged to issue an entitlement to any applicant who meets the eligibility criteria in Sections 4 and 5. Thus an obligation exists for the municipalities to grant entitlements and provide compensation for costs for using national special transport services regardless of existing municipal resources at hand. The individual’s right to national special transport services is rather well protected from the impact of local finances.

### 5.7 Who Is Obligated to Provide Special Transport Services?

Regardless of whether the municipality, the county or the Regional Public Transport Authority manage the formal applications and entitlements, the actual transportation of people in vehicles is invariably handled by business companies, usually by one of the regular bus or taxi companies in the locality. The services are publicly procured, with varying degrees of cooperation and coordination between the municipalities, the counties and the Regional Public

\textsuperscript{527} Prop 2005/06:160, p 256 ff. See also SOU 2003:87, p 99 f.
\textsuperscript{528} RÅ 2010 ref 110.
Transport Authorities.\textsuperscript{529} The question of who is obliged to provide special transport services for the individual entitlement holder is therefore complex.

On a strictly normative level it is the obligation of the municipality. In reality this obligation is transferred, for instance through agreements, to Regional Public Transport Authorities and through public procurement contracts to private bus or taxi companies. The contracting parties are always a municipality or a county or a Regional Public Transport Authority on the one hand and one or several private transport companies on the other. It is clear that the individual traveler is not a customer of the transport company in any traditional sense of the word as the travelers and the companies do not share any well-defined mutual contractual relationship. The companies are obliged to provide what is stated in their contract with the procuring party, regardless of the actual scope of an individual entitlement. It is obvious that the procuring parties do not necessarily represent the passengers’ various interests, as municipalities, counties or Regional Public Transport Authorities have fiscal concerns and responsibilities which may run counter to the needs of the entitlement holders.

The good quality requirement in Section 3 of the Special Transport Services Act, includes the proper treatment of the passenger by drivers and agents, adequate traffic safety, reasonable waiting times and the honoring of agreed pick-up times by the transport provider. The national government has stated that good quality is mainly a contract issue which can be ensured in the public procurement process and the contracts.\textsuperscript{530} The good quality requirement thus seems to be best understood from the perspective of the contracting parties, authorities and private transport companies, and not from the perspective of the individual entitlement holder.

\section*{5.8 Who Is Obligated to Provide National Special Transport Services?}

On the formal and normative level a municipality is obliged to issue entitlement to any applicant who is registered in that municipality and who meets the criteria in Section 5 of the Act. To do this the municipalities are, of course, indirectly obliged to review the applicant's impairment and the circumstances specific to the intended travel. The municipalities may regulate the details regarding booking and ticketing as they see fit. As follows from the

\begin{footnotesize}
\textsuperscript{529} Vägverket 2000, p 26 f and Trafikanalys 2014:7, p 44 ff.
\textsuperscript{530} Prop 2005/06:160, p 245.
\end{footnotesize}
second paragraph of Section 8 of the Act, the benefit may be paid either directly to whoever provides the transport, or to whoever has paid for the journey.

The practical dimension of national special transport services may be handled by any kind of general public transport carrier which operates to and from domestic destinations. Due to the nature of national special transport services the carrier must obviously be prepared to accommodate and assist travelers with disabilities. The normative principles on the level of accessibility regarding general public transport are the general societal goals of mainstreaming and increased accessibility in the transport sector. The national government has noted that the objective to mainstream society is of such extensive and comprehensive character, involving social planning and legislative work in general, that this objective cannot readily be applied in an individual case. The quality of the travel and the level of assistance and accommodation which can be expected from private carriers, therefore, rests on the general level of mainstreaming within the transport sector.

Using the national special transport services can often mean going by regular general public transport, in which case the entitlement holder becomes a customer, passenger and contractual party in a more traditional sense of those concepts. That the entitled person does not pay the entire cost of the ticket does not distinguish the national services journey from, for example, any regular business trip. However, when using the national special transport services means going by taxi or a specially adapted vehicle the traveler is not a customer or contracting party in a traditional sense.

5.9 Legal Guarantees for Entitlement to Special Transport Services

According to Section 16 in the Act a decision to refuse an application for entitlement to use the special transport services can always be appealed to the administrative courts. It follows from Section 16 that all decisions under Sections 6 to 12, may be administratively appealed, thus providing legal recourse for all applicants who are either refused entitlements to special transport services or are granted entitlements but are dissatisfied with some provision or limitation. All these can be tried before an administrative court. The administrative courts have the power to confirm, reverse or vary any part

532 Prop 2005/06:160, p 258.
of the decision under appeal. In this particular respect the individual right to entitlements for special transport services is quite strong.

5.10 Legal Guarantees for Entitlement to National Special Transport Services

Section 13 states that any decisions taken by a public authority under the National Special Transport Services Act may be appealed to the administrative courts. The administrative courts have the power to confirm, reverse or vary any part of the decision under appeal. In this particular respect the individual legal right to entitlements for the national special transport services is quite strong.
6 Transport Services as Social Rights in Denmark

Denmark has one type of special public transport service available for people with disabilities. The individual transport services for people with severe mobility impairments, which function as special public transport for local and regional journeys in everyday life.

6.1 Individual Transport Services for People with Severe Mobility Impairments – a Rights/Duties Relation?

Under Section 1 of the Public Transport Organizations Act every regional council in Denmark has to establish one or more public transport organizations. Under Section 5 of the Act a public transport organization is to provide individual transport services for people with severe mobility impairments within their geographical area. Under Section 11 of the Act, each public transport organization is to establish individual transport services for people with severe mobility impairments which extends beyond transport to treatment, therapy and suchlike, for people over the age of 18 years.

Under Section 11 of the Act, individual transport services for people with severe mobility impairments shall:

1. provide a minimum of 104 one way journeys per year as close to the front door as possible, and

2. ensure that such journeys are carried out in a suitable vehicle.

Further, under Section 11 journeys using these services must be ordered in reasonable time. The fees for the travel must not be substantially higher than for any other journey carried out by the public transport organization. Finally, Section 11 states that the public transport organizations must involve the disability organizations in organizing the services.

The duties on the regions and the public transport organizations to establish and carry out individual transport services are made very clear in the Act. These duties do not correspond with a normative individual right to be entitled to use the services. The right to an individual entitlement may only be

533 Bekendtgørelse nr 412 af 11/04/2010 af lov om trafikselskaber.
inferred insofar as the duty to establish and carry out the services must, of practical necessity, lead to someone utilizing them.

The municipal responsibilities for the individual transport services for people with severe mobility impairments are not regulated by statute law. Yet, according to the national parliament, while the regions and the public transport organizations are responsible for running the services, the municipalities within each region are responsible for financing the services for all entitlement holders within the municipality. The municipalities are also responsible for entitlements, as it is they who decide whether an applicant is eligible for the services and also make the decision to issue the actual entitlement.534

6.1.1 A Minimum of 104 Journeys per Year

The minimum standard set in Section 11 of the Act, of 104 journeys per calendar year, is very specific. The national government has stated that the municipalities and regions cannot demand that the entitled individual spreads the travel evenly over the calendar year, but on the contrary can use up all the 104 single journeys within a considerably shorter time frame than twelve months.535

The minimum standard of 104 journeys per year is indicative of a rights/duties relationship between the entitled person and the municipalities, regions and public transport organizations. An entitlement holder can always claim services up to the minimum number, but nothing more.

The purpose behind the minimum number, according to the government, was not to establish an exact level of services but a basic minimum which the several regions and public transport organizations have to implement and organize. The normative objectives of the individual transport services continue to be the equality of travelers with severe mobility impairments with citizens without such impairments, regarding the possibilities of traveling by public transport, and to support individuals for as long as the public transport system is not mainstreamed and fully accessible.536

534 LFB 2005-04-12 nr 81 Appendix 2. See also Center for Ligebehandling af Handicappede 2007 and Transportministeriet 2010, p 22.
535 LFF 2005-02-23 nr 81.
536 LFF 2005-02-23 nr 81 and Transportministeriet 2010, p 19.
According to the national government, the minimum standard exists to secure the traveler’s minimum demands, so that on this basis they have the possibility of making demands on the services.\footnote{LFTB 2005-05-26 nr 81 Appendix 2.} The government has also noted that while the Act specifies a minimum number of single journeys per year, this is no obstacle to service providers offering more on a general basis, or even offering the possibility of purchasing more journeys on an individual basis.\footnote{LFF 2005-02-23 nr 81.}

There is no explanation in the legal sources for the specific number of 104 journeys per year, except for the obvious estimation that it corresponds to one return journey per week of the calendar year. The national government has stated that the journeys should be for social activities and leisure purposes, and has also given examples of such purposes as visiting family, shopping and cultural activities. The government has also stated that such journeys are spontaneous as opposed to journeys to treatment, therapy and suchlike, which typically are periodically recurring journeys.\footnote{LFF 2005-02-23 nr 81 and Transportministeriet 2010, p 23.} If, and on what basis, one return journey per week would be considered sufficient for social activities and spontaneous leisure purposes is not clear.

Regarding flexibility and availability of the services, as part of the public transport system, the national government has remarked that the time frame for the provision of services shall be within normal operating hours.\footnote{LFF 2005-02-24 nr 83.} Thus, the operating hours of general public transport in the locality will set the normative time frame within which individual transport services are available.

Under Section 11 of the Act a journey involving the services shall be ordered a reasonable time before the journey. According to the national government travel would typically need to be booked several hours in advance, but in certain special situations even days of notice could be required, for example in connection with holidays or journeys over longer distances.\footnote{LFF 2005-02-23 nr 81.}
6.2 Who Is Eligible for the Individual Transport Services for People with Severe Mobility Impairments?

Eligibility criteria for individual transport services for people with severe mobility impairments is not regulated by statute law. The national government has stated that the services shall be available for persons, who due to their mobility impairments, need assistive devices, and are unable to travel by general public transport, even if such transport was to provide increased accessibility. According to the national government, the group of eligible people should be understood as wheelchair users, and persons who use crutches, sticks, walkers and suchlike. People with severe mobility impairments who have a use for, but do not always use, a walking aid, for example due to impaired vision, are also included. The government explicitly states that people living in nursing homes, and those who are entitled to car allowance are not excluded from the services. According to the government no other type of impairment except mobility qualifies for eligibility. However, the municipalities, regions and public transport organizations are free, if they so wish, to allow people with other impairments access to the services.\footnote{LFF 2005-02-23 nr 81.}

The eligibility criteria for the services are thus entirely based on a specific type of impairment, and on the individual need and use of assistive devices.\footnote{See also Transportministeriet 2010, p 22.} However, not everyone with severe mobility impairments and who uses assistive devices is eligible for the services. If the person needs a great deal of assistance when traveling, eligibility may be denied. According to the national government the services provided should include assistance to get in and out of the vehicle, and assistance with lifting the assistive aids and luggage in and out of the vehicle. Other than that, the traveler cannot demand any specific assistance from the driver or the services. The government states that it is not an objective for the services to ensure that everyone, regardless of vigor or need for assistance, may be able to use them. For example, assistance inside the passenger’s residence, or being carried, or transported lying down, is not part of the services provided.\footnote{LFF 2005-02-23 nr 81. As a result, the national government states that some persons with severe mobility impairments will not be able to take advantage of the services, for example if they need to be carried down the stairs, or to travel lying down.\footnote{LFB 2005-04-12 nr 81 Appendix 2.}

The national government has noted that a larger group of people with disabilities, than the group which is eligible for the services, might have a
legitimate need for special public transport services. For example, many people with visual impairments have well-documented problems when trying to use the general public transport system. The government has nevertheless no intention of expanding the eligibility criteria for the services.\(^{546}\)

Section 11 of the Act stipulates that services shall be provided for people with severe mobility impairments over the age of 18 years. The national government had considered establishing a lower age limit, but decided not to open up the services for children, so as not to risk children with mobility impairments being made worse off in relation to transport possibilities under other legislation.\(^{547}\) The regions, municipalities and public transport organizations can, but are not required to, give children access to the services.\(^{548}\) The Danish Disability Council has criticized the exclusion of children with mobility impairments, particularly older children, from the services. The Council noted that there is no basis for assuming that disabled people’s needs for transportation will change considerably from, for example, 16 to 18 years of age. The age limit of 18 years is thus completely arbitrary.\(^{549}\)

### 6.3 Impact of Funding on the Right to Individual Transport Services for People with Severe Mobility Impairments

Because of the statutory requirement of 104 journeys per year, the minimum level of services is normatively very strong. On the other hand, individual needs for services above or beyond the minimum level, are normatively very vulnerable to cutbacks or retrenchment in the Danish regions.

Under Section 11 of the Public Transport Organizations Act, the fee that the entitled individual must pay for each journey must not be substantially higher than the fee for any other journey which is carried out by the public transport organization. The national government has noted that it is difficult to compare prices for individual transport services and general public transport, because principles for calculating fees differ. For example, some public transport organizations use zoning, and others use a fare meter scheme. The government has concluded that it is not possible to state exactly what is

---

\(^{546}\) LFB 2005-04-12 nr 81 Appendix 2, LFB 2005-01-11 nr 105 Appendix 2 and Transportministeriet 2010, p 23 f.

\(^{547}\) LFF 2005-02-23 nr 81.

\(^{548}\) Transportministeriet 2010, p 22.

\(^{549}\) Det Centrale Handicapråd 2004, p 1.
supposed to be understood as not substantially higher. However, the government has also noted that, regardless of how the fees charged by general public transport and the services are compared, the latter are generally higher, and longer journeys especially are more expensive than corresponding journeys by general public transport.

6.4 Who Is Obliged to Provide Individual Transport Services for People with Severe Mobility Impairments?

The municipalities handle applications and issue entitlements to the services. The regions are obliged to establish and run public transport organizations, which provide individual transport services for people with severe mobility impairments. The actual transport of entitled persons is handled by regular bus or taxi companies in the respective localities. The services are procured with varying degrees of cooperation between the municipalities, the regions and their public transport organizations in public procurement proceedings. Every municipality and region has to decide on a service policy, including details on the choice of vendors and specifications, bidding and calculations, quality requirements and follow-up policies etc. The legal question of who is obliged to provide individual transport services to the private entitlement holder is therefore complex. Under Sections 5 and 11 of the Act, the regions and the public transport organizations are normatively obliged to provide the services. In practice, however, the obligation to provide services is transferred through public procurement contracts to private bus or taxi companies. An individual passenger with the services is, therefore, not a customer to the transport company in any traditional sense, as the passenger and the company do not share any well-defined mutual contractual relationship. Instead, the contracting parties are usually a public transport organization on the one hand, and a private transport company on the other. As such, a company is obliged to provide services to the individual entitlement holder only insofar as the contract with the procuring party obliges them to do so.

---

550 LFB 2005-04-12 nr 81 Appendix 2.
551 Transportministeriet 2010, p 23.
552 Danske Busvognmænd and KL 2008.
6.5 Legal Guarantees for Entitlement to Individual Transport Services for People with Severe Mobility Impairments

A person whose application for an entitlement to use individual transport services for people with severe mobility impairments is refused by the municipality, has no right of appeal. This formal dimension is subject only to the regular national supervision of municipalities and regions. The supervision includes questions and reminders directed to municipalities and regions by the responsible national government ministry. The only available legal recourse for a dissatisfied applicant is to complain to the Ombudsman, or the national government, or a member of parliament, none of whom may subject the individual case to legal revision. The national government has stated that the general supervision of the municipal and regional administration of the transport services functions adequately, and that the main focus of national supervision is to make sure that the public transport organizations meet the minimum standard of providing 104 journeys per year. The only legal guarantees, from an individual perspective, are therefore the minimum standards of the Act. Everything else is subject to regional and municipal discretion.

553 LFB 2005-04-12 nr 81 Appendix 2.
7 Transport Services as Social Rights in Norway

Norway has one type of special public transport available for people with disabilities, the special transport services for people with disabilities, which functions as special public transport for local and regional journeys in everyday life. The legal basis for special transport services for people with disabilities is a combination of national guidelines and local and regional self-governance. No statute law specifically mandates special transport services; rather everything but specific legislation, including financing, is in place.

7.1 Special Transport Services for People with Disabilities – a Rights/Duties Relation?

The parliamentary decision of 1986 to establish special transport services can be considered binding on the counties regarding the organization and provision of services. The national government’s financial subsidies to the counties also presuppose that the counties will fulfill a duty to provide services. The Ministry of Transport and Communication exercises supervision of the counties regarding all public transport, including the special transport services, and the Ministry has issued General Guidelines for the services. The General Guidelines function as a national normative document, and their very existence is also an indication that the counties have a duty to organize and provide services.

However, the General Guidelines on special transport services for people with disabilities are not necessarily binding on the counties. The status of the General Guidelines has been discussed by both the national government and the parliament, and one conclusion reached is that, whether or not the General Guidelines can be considered binding on the counties, is closely connected with the issue of financing the services. As long as the counties continue to finance the major part of the services, the national government will not consider the General Guidelines as binding on them. The national

554 See for example Prop 1 S (2014-2015), p 17 and 120 f.
555 Rundskriv N-4/97.
government has stated that to establish binding national guidelines will, on the one hand, accomplish a greater level of equality in the treatment of those needing the services than the current, budgetary controlled services operated by the counties, but on the other, binding national guidelines would imply increased costs. In addition such binding guidelines would also mean a break with the principle that the county councils decide both the extent and the quality of public transport services in their counties. The national government concluded that it would be more expedient to increase accessibility to general public transport for people with disabilities, than to issue binding guidelines for the special transport services.\(^5\)

The status of the General Guidelines on special transport services for people with disabilities as a normative source of law is therefore unclear. The government has stated that:

> “The task of the national government is to guide the counties in their work to develop special transport services for people with disabilities. The General Guidelines from the national government are designed so as to only in the slightest possible degree interfere with local self-governance.”\(^6\)

The General Guidelines are therefore not considered to be binding on the counties and, in accordance with the government’s objective not to interfere with the counties’ self-governance, the language of the General Guidelines is vague on the specifics concerning the services. Nevertheless, with no statute law in force, the General Guidelines are still the most specific and directing normative document on the national level. The General Guidelines are considered to have some authority, and national reports indicate that all the counties seem to follow them.\(^7\) As such, they have a certain strength as a national normative instrument.

The General Guidelines state that the counties ought to issue more detailed regulations, reflecting local priorities. These county regulations ought to include general criteria for entitlement to services and the extent of individual rights to such services. The General Guidelines also state that the local or regional disability organizations ought to be given a consultative role in the process of developing the services in the counties.\(^8\)

---


\(^8\) Rundskriv N-4/97.
As a consequence, the counties’ regulations are an important source of law regarding the services. The Parliamentary Ombudsman has concluded that the county regulations for the special transport services for people with disabilities constitute the basic regulation of individual rights, and the Ombudsman has stated that the services:

“are not mandated by statute law. The counties are thus free to organize the services as they deem proper.”\(^{562}\)

In conclusion, there is a duty on the counties to organize and provide services, and the form and limits of that duty are established by the General Guidelines, and by the national government’s financial subsidies to the counties. A corresponding individual right to services exists, but is very weak, and the form and limits of that weak individual right are set forth in the vague language of the General Guidelines.

7.2 Who Is Eligible for the Special Transport Services for People with Disabilities?

The General Guidelines state that, as a general rule, the following groups ought to be given entitlements:

- People with impairments who cannot use ordinary means of general public transport
- People with impairments who cannot use ordinary means of general public transport without great difficulty
- People with impairments who need assistance to get to or from means of general public transport\(^{563}\)

The researcher Gisle Solvoll summarizes the criteria as meaning that for eligibility applicants must have lasting mobility impairments which either prevents them from using general public transport or allows them only to do so with considerable difficulty.\(^{564}\)

The General Guidelines further state that:

\(^{562}\) Sak 2006/1280 Sivilombudsmannen.  
\(^{563}\) Rundskriv N-4/97.  
\(^{564}\) Solvoll 2012, p 6.
“Status as entitled to use the services is given after individual evaluation, based on a medical certificate, and in relation to the regulations established by the county. The granting of entitlement ought to take place within the health and social sector at the municipal level. In order for the social services administration at the municipal level to have the best possibilities for taking on their responsibilities, good communications between the social services and the county’s public transport administration are important.”

From both the parliament’s decision and from the General Guidelines, it follows that the municipalities in each county have important functions, and take an active part in evaluating and determining individual eligibility for the services. Several counties have delegated this decision to the municipalities. Thus, more often than not, a municipality is directly responsible for evaluating an individual’s need for services, and the individual’s eligibility for those services under county regulations. The actual procedure has been described as the municipal social services administration coming to a decision based mainly on doctors’ certificates presented by the applicants. The design and content of these certificates vary among counties.

The eligibility criteria for entitlement to use the services also vary considerably among the counties. Some counties have criteria that exclude or restrict eligibility on the grounds of low age, individual financial situation, or whether the person is entitled to car allowance. Some counties limit eligibility for people living in institutions, nursing homes, retirement homes and suchlike, and some counties restrict eligibility to the services for people who are married to a non-disabled person who has access to a family car.

The national government has noted that some municipalities demand that the applicant resides in the municipality. In a report from 2000 a student temporarily moved from his municipality to enroll at an educational facility located in another municipality. As a wheelchair user, the student required special transport services but was refused by his municipality of residence, as he was no longer considered a resident, and was also denied services by the other municipality as he was not considered a permanent resident there.

565 Rundskriv N-4/97.
568 For a good overview of county eligibility criteria, see Solvoll 2012, p 15.
569 NOU 2001:22, p 149.
General public transport varies considerably among counties regarding fares, frequency of services, areas covered by public transport, comfort, level of services etc. As special transport services for people with disabilities are intended to compensate those individuals who cannot use general public transport, many counties have regulated that lack of sufficient general public transport in a locality is not, in and of itself, a criterion for eligibility to the services. An individual need for services is thus weighed against the provision of general public transport in the locality, which the person could have used, had it not been for the impairment.

7.3 Impact of Funding on the Right to Special Transport Services for People with Disabilities

The Ministry of Transport and Communication has noted that all kinds of public transport are subject to budget decisions, and has also stated that:

“The county offers route services that every private individual adjusts to and pays for. Special transport presents a challenge in that the transport is individually controlled. This individually controlled demand must be linked to budget limits, that is, there must be mechanisms in place that secure coordination between the travelers’ total use of services and the fiscal limits. In practice this means quotas. This is so today, and will also have to be so in the future, according to the Ministry.”

This implies that if the number of people entitled to use the services increases, the county can either increase funding, or reduce the quality or quantity of the services provided. In this respect the impact of local finances on the rights to services is very strong. The local budget is recognized by the national government as superior to any individual need for services. For example, in 2008 one county decided to cut funding to the services, which immediately resulted in fewer entitlements being issued.

The counties may take the financial situation into consideration regarding both eligibility for services and the level of services. The national government has noted that statutory regulation of access to the services, making it more

571 Samferdseldepartementet 1997, p 18.
rights-based instead of budget controlled, and thus more predictable for those entitled to use them, would facilitate equal treatment.573

Nonetheless, the General Guidelines list only general criteria on the level of services:

“As a general rule the following principles ought to be in force for special transport:

- Someone entitled to use the special transport services ought to decide for themselves the purposes for which they want to use the transport services.

- The individual fees ought to be based on general public transport fares, but may also reflect the quality of the individually adapted transport.

- Coupons and reimbursement systems ought to be designed so as to make possible the utilization of special transport services outside the residential municipality as well as the county.

- Travelers who are escorting the person entitled to use the services should be able to travel without having to pay. The entitled person’s need for an escort is evaluated in conjunction with the entitlement process. It should be evident from the entitled person’s ID card whether the person needs an escort.

- Any prospective coordination of special transport services should be designed locally, based, among other things, on residential patterns and the need for services.

- Transport services ought to be differentiated among the various groups who are entitled to use them. Transport services ought also to be able to vary within the same county, based upon local conditions.”574

The number of journeys with the services is basically distributed across one of two models. In some counties an entitled person is granted a specific number of journeys each year (the tour card model). In other counties an entitled person is, instead, granted a specific sum of money each year (the money card model). With the tour card model the traveler is assured of having a minimum number of journeys, regardless of the specific conditions associated with each one. With the money card model circumstances such as waiting times, time for assistance to and from the street door, etc, may affect the cost of the journey. With the money card model, geographic conditions, especially

574 Rundskriv N-4/97.
distance, may have a considerable impact on the cost of the journey and therefore become significant. From the county’s perspective, however, the money card model offers the most predictable budget control solution.575

Regardless of which model a county uses, the level of services varies. In most counties the individual passenger usually has to pay an individual fee per journey. Some county services have a set fee, depending on, for example, the distance involved, and others have a fee of, for example, 10%, 15% or 20% of the metered fare of the taxi, though sometimes capped at a given sum. A few services charge no fee at all and those journeys are thus free for the traveler.576

Within any county’s model of services, eligible people of different age or with different impairments might receive more or fewer journeys depending on the county’s priorities. Younger people are sometimes prioritized by the counties, together with people with visual impairments, wheelchair users and people with intellectual disabilities. In the capital city (Oslo), for example, eligible persons over 67 years of age get 50 journeys a year, while everyone between 6 and 67 years of age gets 150. However, people with visual impairments and wheelchair users get 150 journeys a year, regardless of age. In another example (the county of Møre og Romsdal) the criteria focus on the distance between the municipality center and the traveler’s residence. Eligible people living less than 10 km from the municipality center thus receive fewer journeys, while wheelchair users who live further than 10 km away from the municipality center receive the highest number of journeys.577 When such residential criteria are coupled with other criteria, such as age, or type of impairment, the result can be the legal creation of sub-groups such as people who need to travel by specially adapted vehicle, and who reside more than 15 km away from the nearest town and who are younger than 67 years, or wheelchair-users under 40 years who reside more than 20 km from the nearest town center, and who have no car, etc.578

7.4 Who Is Obliged to Provide Special Transport Services for People with Disabilities?

The formal dimension of the special transport services for people with disabilities, applications, medical evaluations and entitlements, are mostly

576 Solvoll 2012, p 17 f.
577 Solvoll 2012, p 23.
handled by either municipalities or, in a few instances, the counties themselves. The practical dimension of the service provision is handled either by the counties, or by private taxi or bus companies, or a combination thereof. In around half of the counties the county itself makes all the negotiations with, decisions about, and reimbursements to the various transport providers. In one county the municipalities handle the transport providers, and in the rest of the counties various private companies handle all, or parts of, deliberations with, and reimbursements to the private transport providers.  

7.5 Legal Guarantees for Entitlement to Special Transport Services for People with Disabilities

If an applicant is refused entitlement to use the special transport services for people with disabilities by a municipality or a county, or is dissatisfied with the number of journeys, a complaint can be directed to a special complaints office. In about half of the counties a complaint is handled by a municipal complaints office, and in the rest the county will have a complaints office of its own. In all cases the decision of the complaints office is final. No independent judicial or administrative authority have any power to try or to alter the decision. In this respect, local self-governance is very strong, and the individual right is very weak.

---

579 Solvoll 2012, p 12 ff.
PART III – Car Allowance for People with Disabilities
8 The Law Governing Car Allowances in Sweden, Denmark and Norway – Emergence and Development

8.1 Car Allowance in Sweden – from Tax Relief to Social Benefit

Car allowance is basically a cash benefit paid by the national Swedish government to either a disabled private individual or to the parents of a disabled child for the purpose of buying and/or adapting a private car. Car allowance may also come as a cash benefit to cover other means of transportation, such as mopeds or motorcycles. The main legal structures behind the modern Swedish benefit were introduced in 1988 but its origins go back to the early years of the welfare state.

National public subsidies to people with disabilities for the purchase of private cars were first introduced in Sweden at the end of the 1940s. The objective was to enhance the possibilities for people with disabilities to travel to and from work and vocational training. The subsidies were part of the national industrial aid system and were administered by the national social security administration. Subsidies in the form of a car allowance could also be granted in certain instances by labor market authorities, provided that the disabled person was able to drive the car and was partially able to work for a living. Such allowances could also be granted as a contribution towards setting up a small business, a small taxi company for example. All of these allowances were means-tested, that is, economic criteria excluded people above a certain level of income. The medical criterion for the allowance was that the applicant had to be:

“severly crippled and have need for the vehicle for transportation”\(^{581}\)

Allowances were only available to adults, at the time people aged 22 years or older. Gradually the administration was transferred to the national labor authorities who administered the entire car allowance system from 1962 onwards. The granting of subsidies for the purchase of cars was made on an individual, needs-tested basis. The subsidies came in the form of a cash benefit. From 1965 onwards the subsidies were means-tested and if the

disabled person did not qualify for the subsidies, an interest-free loan could be granted instead. This loan could be supplemented with a cash benefit for adapting the car purchased with the loan. Until 1976 the means-testing took into account the marital status of the applicant and the income of the entire immediate family. From 1976 onwards only the applicant’s financial situation was taken into account. At this time interest-free loans became more limited but the existing cap on the cash benefit for adaptation was removed. The subsidies further included a possibility of obtaining a cash benefit for training in a driving school.  

In some municipalities and counties, at various times, subsidies were also granted for the purchase of cars, motorcycles or mopeds to people with disabilities. In addition to public subsidies, many organized charities, some private companies and disability organizations also provided various kinds of voluntary help. Overall public responsibility for providing assistive technology for people with disabilities was shared between the national government and the counties. By the 1970s the General Guidelines issued by the Swedish Institute of Assistive Technology recommended that the counties provide mopeds for those people who due to a disability had difficulties utilizing other means of transportation.

By the mid-1980s public support in the form of car allowance was thus geared entirely to people with disabilities who needed a car to get to work and to those who were enrolled in vocational education or vocational rehabilitation programs. In July 1987 the government finally issued the Decree on Contributions to the Handicapped for the Purchase of Motor Vehicles. The Decree became obsolete within 15 months of its adoption, but it formalized the long established practices when granting car allowance. The cash benefit was means-tested and was intended to cover the entire cost of purchasing and adapting a private car. A new car could be bought every five years if the need for it was certified by an authorized inspector at the National Traffic Security Administration or earlier under special circumstances. The subsidies system was administered by the labor market authorities. Decisions to grant or deny benefits were made by the County Labor Market Boards, and could be appealed administratively to the National Labor Market Board, and

---

582 SOU 1982:44, p 17 f.  
583 Prop 1960:165, p 7 ff.  
584 Handikappinstitutet, later renamed Hjälpmedelsinstitutet.  
586 Förordning (1987:410) om bidrag till handikappade för att skaffa motorfordon m.m.  
587 Trafiksäkerhetsverket.  
588 Länsarbetsnämnderna.  
589 Arbetsmarknadsstyrelsen, AMS.
eventually to the national government. Until 1987 the system was not regulated by any parliament acts or any government decrees, but by the annual so-called regulation letter regarding the budget from the government to the National Labor Market Board. From the perspective of individual legal rights the lack of formal legislation meant that the legal strength of an individual claim was weak and that the system was entirely dependent on annual budgetary funding from the national government.\textsuperscript{590}

Another form of support for people with disabilities, not aimed at purchasing cars but at maintaining them and driving them around, took the form of various tax deductions and refunds. As with car allowance the basic assumption for tax relief was that the disabled car owner was either employed or in vocational education or training. By 1960 certain categories of vehicles, for example so-called invalid motorcycles, were exempt from vehicle taxation. Other vehicles, such as regular cars or vans, could also be exempted from taxation provided that the disabled car owner was able to drive the vehicle and was dependent on the car for transportation to and from work or education. The production and sale of certain vehicles adapted for people with disabilities was also exempt from VAT.

In 1960 the Ordinance on Benefits to Crippled Owners of Motor Vehicles\textsuperscript{591} was enacted by the Swedish parliament. Under the Ordinance certain disabled car owners, defined in Section 1 as those whose motor vehicles were exempt from vehicle taxation, would be entitled to certain benefits. The benefit was in cash paid directly to the car owner and, under Section 3 of the Ordinance, was calculated to correspond to the government tax on 480 liters of gasoline or 340 liters of combustible oil, depending on which fuel the car used. Owners of motorcycles received 50\% of the benefit paid for a car. The legal construction of the benefit was based on several assumptions. An empirical study of several employed drivers with disabilities who owned tax-exempted vehicles concluded that the average driver drove an average of 2,800 kilometers every year to and from work. However, several drivers also drove their cars on many occasions that were indirectly related to their work or workplace.\textsuperscript{592} For such driving:

\begin{quote}
“which does not correspond to the average need to drive to and from a workplace or educational facility but is regarded as driving that is more indirectly connected with occupational activities or education”\textsuperscript{593}
\end{quote}

\textsuperscript{590} See SOU 1982:44, p 18 ff.
\textsuperscript{591} Förordning (1960:603) om bidrag till vanföra ägare av motorfordon.
\textsuperscript{592} Prop 1960:165, p 11 ff.
\textsuperscript{593} Prop 1960:165, p 27.
an extra 2 000 kilometers was suggested. Further, an average fuel consumption of 1 liter of gasoline per 10 kilometers for cars and half that quantity for motorcycles was proposed. The legal design meant that the benefit was not means-tested but directly dependent on the status of the owner’s vehicle being exempt from vehicle taxation under the now obsolete Ordinance on Automobile Taxation. This status in turn was dependent on the car owner being considered sufficiently crippled to qualify for exemption.

In 1973 the Ordinance on Benefits to Crippled Owners of Motor Vehicles was subject to linguistic overhaul in that the name of the Ordinance was changed to the Ordinance on Benefits to Certain Handicapped Owners of Motor Vehicles. For example, the reference in Section 2 to the entitled individual as the crippled person was changed to the handicapped person, and the criterion in Section 3 of 340 liters of combustible oil was removed entirely. The tax law regulations on tax exemption also changed and car owners with disabilities now became entitled to refunds on vehicle tax and on the so-called kilometer tax. Minor changes to the Ordinance were made repeatedly throughout the 1970s and early 1980s. In 1978 the name of the Ordinance was changed again, this time to the Benefits to Certain Handicapped Owners of Motor Vehicles Act.

By the mid-1980s disabled people who owned a car and were more or less securely active on the labor market had access to three distinct tax benefits: when purchasing a new car the VAT could be refunded; disabled car owners were also eligible for exemption from annual vehicle taxation, and anyone so exempted, if the car was gasoline fueled, was also given an annual standardized refund corresponding to, at this time, the government tax on 700 liters of gasoline. Following the legal overhaul in 1988 all such tax benefits for disabled drivers were abolished.

However, specific indirect tax relief for working disabled drivers still exists. Under Chapter 12 Sections 26 to 30 of the Income Tax Act persons who, due to age, sickness or disability, need to use their own car for journeys between home and work may, within certain boundaries, deduct the actual costs for those journeys from their annual income taxation.

594 Förordningen den 2 juni 1922 om automobilskatt.
595 Förordning (1960:603) om bidrag till vissa handikappade ägare av motorfordon.
597 Lag (1960:603) om bidrag till vissa handikappade ägare av motorfordon.
598 Inkomstskattelag (1999:1229).
599 For details see Guidelines on Deductions for Work Journeys for Disabled etc 2008-12-12.
The various forms of support were criticized from several perspectives. The limitation in scope for people working or in vocational training was considered too narrow and the number of different benefits involved made the system complicated for individuals. The government prepared an overhaul of the entire system and in 1988 legal reform laid the foundations for a new and improved car allowance. The purpose behind the overhaul was to give more people the right to benefits, to increase the benefits and to simplify the system for private individuals. When proposing legislation, the government stated its intention of widening the group of eligible individuals and noted that car allowance was of major importance in ensuring a well-functioning disability policy. Access to a car was now expected to not only increase participation in the labor force but also help people with disabilities to live active and independent lives. To achieve these goals the group of eligible individuals needed to include more persons than those already active on the labor market.

In October 1988 the now obsolete Act on Handling of Administrative Matters on Car Allowance to the Handicapped came into force. Section 1 of the Act stated that national contribution to the handicapped and parents of handicapped children for acquiring motor vehicles is given according to regulations provided by the national government. With the Act delegating significant regulatory powers to the national government, the fundamental regulation became the Decree on Car Allowance to Handicapped People. Section 1 stated that the national contribution to the handicapped and parents of handicapped children to acquire motor vehicles was given according to the regulations of the Decree. Under Section 3, car allowance could be granted for four specified purposes:

1. The acquiring of a private car, motorcycle or moped
2. The alteration of such a vehicle
3. The acquiring of a special device for such a vehicle
4. The acquiring of, or alteration of, or acquiring of a special device for, another type of vehicle if there are special grounds due to the nature of the handicap or other circumstances

---

602 Lag (1988:360) om handläggning av ärenden om bilstöd till handikappade.
The normative idea was clearly that the benefit would be primarily for the purchase and adaptation of private cars. The government noted, however, that the fourth category was necessary in order to allow people with very special needs to receive contributions towards acquiring a light truck or a small bus.\footnote{Prop 1987/88:99, p 23 f.}

Section 2 of the Decree declared that a handicapped person is someone who, due to impairments which are lasting, has considerable difficulties in moving about on their own or traveling by general public transport. In all, five groups of individuals were eligible for the new car allowance:\footnote{Sections 2 and 5 of the Decree. See also Prop 1987/88:99, p 12.}

1. Handicapped people under 65 years of age who are dependent upon a private vehicle for gainful employment or vocational education or vocational rehabilitation

2. Handicapped people under 65 years of age who had been granted car allowance under clause 1 but had then left the labor market either with an early retirement pension or a temporary disability pension

3. Other handicapped people aged 18 to 49 years than those mentioned under clauses 1 and 2

4. Handicapped parents with children under 18 years of age

5. Parents with a handicapped child under 18 years of age

The first group was basically the same as those who were eligible for the older forms of car allowance; the other four groups signaled a broader and more inclusive eligibility. Car allowance was granted to the first two groups regardless of whether or not the eligible person could drive the vehicle, that is, the benefits could also be granted if another person drove the vehicle. The last three groups were granted car allowance only under the specific condition that the eligible person was in fact going to drive the vehicle. In the case of the third group this meant, for example, that a disabled person who could not drive a vehicle but who had family or assistants who could was not eligible. In the case of the fourth group this meant, for example, that if a child had one disabled parent without a driver’s license and the other parent was licensed to drive but was not disabled, neither of the parents would be eligible. Further, the fourth and the fifth groups – the parents – were only eligible if they lived with the child and needed the vehicle for family transportation. Also eligible in the fourth and fifth groups, if they lived together on a permanent basis, were a
current or former spouse of a parent, or a person with whom the parent had children.

The parliament noted that from an ideological point of view the only reasonable criteria for eligibility would be all people with mobility impairments, without discrimination. However, the parliament also feared that the resulting costs would be prohibitive. In any case the widening of the eligible group compared to the old system was seen as a major improvement, inspired by the ideas of a general disability policy. Concerning the third group of eligible persons the parliament noted that younger people who had never entered the labor market and those who were enrolled in higher education would now, for the first time, be eligible for car allowance. The parliament expressed the hopes that the increased possibilities for these people would expand their social contacts and facilitate their participation in society.\textsuperscript{606}

Car allowance now came to the private individual in three separate forms of contributions from the national government.\textsuperscript{607} The first form of contribution was the basic allowance\textsuperscript{608} which went to anyone entitled to car allowance. At its inception in 1988 the basic allowance was SEK 50 000. Parents received only half of the basic allowance (SEK 25 000) while the first three groups received the full amount, according to Section 6 of the Decree. The basic allowance could also be granted as smaller sums for other vehicles than ordinary private cars, typically mopeds and motorcycles. Consequent to the introduction of the basic allowance in the new system, tax benefits for disabled car owners were abolished. The government argued that a system of contributions was easier for private individuals to grasp, and was more generous towards the many people with disabilities for whom the economic stress of purchasing a private car was a big problem. From an ideological perspective it was important that the car allowance was not entirely means-tested, but was a general contribution signaling the responsibility of society to make available assistive technologies for all people with mobility impairments.\textsuperscript{609}

The second form was the purchase allowance\textsuperscript{610} which was means-tested. The maximum amount of this form of the benefit was SEK 35 000 in 1988. When calculating the purchase allowance for the first three groups only the income of the eligible person was means-tested, that is, the means of a spouse or a

\textsuperscript{606} SFU 1987/88:23, p 7 f.
\textsuperscript{607} Section 4 of the Decree. See also Prop 1987/88:99, p 18 and SFU 1987/88:23, p 11 f.
\textsuperscript{608} “Grundbidrag” in Swedish.
\textsuperscript{610} “Anskaffningsbidrag” in Swedish.
cohabiting partner were not taken into account. For parents, however, both incomes were taken together, making it less likely that parents would be eligible for purchase allowance.\(^{611}\)

The third form of the benefit was the adaptation allowance\(^{612}\) which was granted to all five groups of eligible persons as a reimbursement for the actual costs of refitting and adapting the vehicle. Section 9 of the Decree stated that the costs covered were for such alteration of, or additions to, the vehicle as were needed to allow the handicapped person to use it and as were suitable with regard to the age and condition of the vehicle.

The legal construction of basic and purchase allowances meant that these benefits had no direct connection to what it actually cost the entitled individual to acquire the specific vehicle. Basic allowance went to all those entitled while purchase allowance was tied to the entitled individual’s or the entitled parents’ income, not the actual cost of purchasing the vehicle. However, under Section 7 of the Decree, in any individual case the sum of the basic and purchase allowances together was not to exceed the actual cost of purchase by more than SEK 30 000.

The general rule for the time interval between the granting of applications from the same individual regarding basic allowance and purchase allowance was set at seven years; see Sections 10 and 11 in the Decree. In special circumstances, such as traffic safety needs or medical circumstances, benefits could be granted at shorter time intervals. According to the preparatory works, adaptation allowance was not limited by time intervals per se but should be granted when the need for adaptation of the car arose.\(^{613}\)

With the changes in 1988 responsibility for the administration of car allowance was transferred from the labor market authorities to the social security authorities. It followed from Section 2 in the Act that the Swedish Social Insurance Agency\(^{614}\) would handle all administrative matters regarding car allowance. The national government noted that the new social benefit meant a shift in policy – from a labor market measure to a general, assistive technological measure aimed at universal inclusion.\(^{615}\) As a benefit of the welfare state it was considered logical that it would be administrated by the social security authorities.

---

\(^{611}\) Sections 6, 7 and 8 of the Decree. See also Guidelines on Car Allowance 2003:1 Version 4, p 18.

\(^{612}\) "Anpassningsbidrag" in Swedish.


\(^{614}\) Försäkringskassan.

The reform in 1988 not only made new groups of individuals eligible but, compared to the old system, also strengthened the formal rights of applicants. The formalization of car allowance in written legislation was, of course, important in this respect, as was the provision that applications which had been partly or wholly refused, could now be appealed to the administrative courts under Section 5 of the Act.

The scope of car allowance was slightly widened in July 1995 as benefits could be granted for a new specific purpose: driving instruction in connection with the acquisition of a motor vehicle. The new Section 5a of the Decree stipulated the eligibility requirements. Car allowance for learning to drive could be granted to someone who belonged to the first group of eligible individuals in Section 3 and who had already been granted the basic allowance. To qualify for benefits to cover driving instruction the individual either had to be unemployed or at risk of becoming unemployed. Further, the new benefit was needs-tested, that is, it could be granted only with the provision that driving instruction could be expected to lead to regular employment.

The purpose behind the reform was to acknowledge the sometimes considerable difficulties and costs involved in getting a driver’s license for persons who needed driving instruction in specially adapted vehicles. However, very few persons could meet the steep eligibility requirements. For example in 2003 a grand total of nine private individuals received car allowance for attending driving school. Viewed ideologically the reform suggested a move back to reaffirming the connections between car allowance and the labor market.

Section 1 of the Decree underwent significant change in November 1997. The new wording stated that within the scope of the funds allocated for car allowance for the handicapped, national contributions would be provided, according to the regulations in the Decree, to persons with disabilities and the parents of children with disabilities to purchase motor vehicles. This change meant that the legal right to car allowance became explicitly limited to whatever funding the parliament granted in the national budget. This weakening of the legal right to car allowance appeared during a period of retrenchment in welfare policies in Sweden. It also coincides in time when tensions surfaced in Swedish social law concerning the legal strength of

---

617 SOU 2005:26, p 226.
619 See for example Gunnarsson 2003, p 14.
individual social rights. In this context the main purpose behind the changes in 1997 can be understood as being to weaken the individual claim-rights in the Decree. At the same time a new Section 4 a was introduced that specified six months, from the day of notice of payment, as the deadline within which the benefit must be used by the eligible person. If the granted allowance was not used within that time the benefit was revoked.

In 1994 a review by a government commission suggested that further widening the group of people eligible for car allowance would be beneficial from a fiscal point of view, as those with disabilities who are not eligible for car allowance often are eligible for special transport services and that those are considerably more expensive for the public finances than the allowance. However, while the national government bears the costs of car allowance the various municipalities or regions bear the costs of special transport services. With no level of government taking the initiative at the time the suggestion went nowhere. In 2005, however, another government commission again argued that being able to use one’s own car rather than the special transport services benefited the private individual, the society and the public finances. Accordingly, some municipalities were given the option, on a trial basis, of offering benefits resembling car allowance to those entitled to use special transport services but not eligible for car allowance. The trial period lasted from July 2007 to June 2010. The government expressed the hope that the need for private individuals to use the special transport services would decline while their possibilities to move about would increase. As the size and scope of the experimental benefits were left entirely up to the municipalities to regulate, there was a precondition that no infringement per se of the individual’s entitlement to special transport services was allowed. However, the municipalities were free to use their right to set special conditions for the use of the services, under Section 9 of the Special Transport Services Act, in connection with the granting of benefits during the trial. In 2014 the Mobility Support as Complement to Special Transport Services Act again allow Swedish municipalities to grant subsidies for purchasing and adapting a private car to people who are eligible for special transport services but not for car allowance. However, there is no requirement on a municipality to actually do this, and also there are no rights to claim or appeal for the individuals concerned.

---

621 SOU 1994:55, p 140.
622 SOU 2005:26, p 120 ff.
624 Prop 2005/06:92, p 10.
625 Prop 2005/06:92, p 9.
Since the inception of the modern car allowance in 1988 around 45% of all benefits are granted to people with disabilities under 65 years of age who work. Around 25% of all benefits are granted to parents who are not disabled themselves but who have children with disabilities, and another 25% are granted to people with disabilities who are between 18 and 50 years and who do not work or take part in occupational training or rehabilitation. The small remainder of benefits is granted to persons who have worked but no longer do so, and to parents with disabilities, respectively. Every year around 4 000 people apply for car allowance; around 60% are granted benefits while the rest are refused, that is, a yearly average of around 2 500 applications are granted. More men than women apply for car allowance; in 2003 a total of 1 940 men and 1 720 women applied. It has been suggested that the higher number of men, which is not reflected in either the general population or in the general proportion of people with disabilities, is due to the higher number of men having drivers’ licenses and the fact that women earn less than men and so have less opportunity to purchase and own a car. Gendered status differences and gendered economic differences in society thus reproduce themselves in the car allowance. In addition, a higher percentage of men’s applications than women’s applications are granted. For the period between 1988 and 2006 66% of men’s applications and 63% of women’s were granted. Between 1988 and 2003 around 57% of the total cash benefit went to men and 43% to women. These sex-based differences may also be slowly increasing. In the year 2003 the average male who was granted an entitlement received a cash benefit of SEK 123 800 while the average female received SEK 94 900. Various explanations for these gendered differences have been suggested. One is that a larger group of men with disabilities are qualified for car allowance under the legal eligibility criteria; another is that men with disabilities are better represented in their contacts with the authorities or are just better at describing their impairments in such a way that they match the entitlement criteria. Another suggestion is that the decision-making process is not gender neutral but is biased against women applicants. Men with disabilities born outside the Nordic countries are overrepresented among applicants but have on average a smaller chance than men born in the Nordic countries of having their application granted. At the same time women with disabilities born outside the Nordic countries have the least chance of all identifiable groups of having their application granted, indicating the possibility of a systematic bias regarding both gender and ethnicity in the application process.\footnote{\textit{627} SOU 2005:26, p 53 and 56 ff and Försäkringskassan 2008.}

During 2006 the language in both the Act on Handling of Administrative Matters on Car Allowance to the Handicapped and the Decree on Car Allowance to Handicapped People was modernized so that the texts
consistently used the notion of functional impairment rather than handicap. This modernization continued in 2007 when changes regarding the material scope and eligibility requirements came into effect. In January 2011 a formal change occurred as the Act and the Decree were abolished and the legal content therein was transferred, more or less verbatim, to the new unified Social Security Act. The legislation has, therefore, not changed materially to any significant degree since 2007. As a consequence the changes in 2007 will be analyzed in Chapter 9 as pertaining to the current Swedish law on car allowance.

### 8.2 Car Allowance in Denmark – from National Tax Relief to Municipal Loans

The main form of car allowance in Denmark is a loan from the municipality to a private individual, for the purchase of a private car. The loan is interest-free and may also be partially repayment-free. In 2006 75% of all people in Denmark aged 16-64 years had access to a car; of these 1.2% had bought the car with financial assistance from the public authorities. Half of the percentile of persons in the population with the most severe disabilities had a car. However, only 18% of these cars were bought with assistance from the car allowance. This was lower than in 1995 when the figure was 25% of the cars owned by this group. As a consequence the public costs for car allowance have not increased to any significant extent since the mid-1990s. In 2008 around 2 200 cars were purchased with help from the car allowance, and in that year a grand total of approximately 20 000 cars on the road in Denmark had at some point been purchased with support from the car allowance.

The first specific Danish legislation regarding cars for people with disabilities came into effect in 1956. Under the Act on Changes to the Act on Sales Tax on Motor Vehicles and to the Gasoline Tax Act the Disablement Insurance

---

630 Lag (2010:111) om införande av socialförsäkringsbalken.
632 ”Støtte til bil” in Danish.
634 Bengtsson 2008, p 23.
635 LFB 2010-05-11 nr 168.
636 Lov nr 163 af 13/06/1956 om ændringer i lov om omsætningsafgift af motorkøretøjer og lov om afgift af benzin.
Tribunal\textsuperscript{637} could, under certain circumstances, authorize a refund of the sales tax on cars for three groups of people who were categorized as invalids. The first group comprised people who, due to serious invalidity, without a car could only with great difficulty get to and from their workplace, or to and from an educational facility or medical institution in those cases where the education or medical treatment was essential in order for them to exercise a profession and provide for themselves. The second group was made up of people who, due to invalidity, could only with great difficulty travel without utilizing a motor vehicle. Prerequisites for this group were that the vehicle was only for the conveyance of the driver and could not go faster than 30 km per hour. The third group covered people who, due to serious invalidity, could not travel without a motor vehicle but were unable to use the vehicle themselves; the vehicle was for the conveyance of a maximum of two people and the cylinder volume of the motor was to be no greater than $300 \text{ cm}^3$. The tax refund was revoked if the motor vehicle was transferred to someone else, for example through sale or lease, within three years of the eligible person first registering it.\textsuperscript{638}

When someone was found to be eligible for a refund of the sales tax the person could also apply for exemption from the fees for a driver’s license, license plates, driver’s tests and certain registration fees. The application was addressed to the local police authority which, on behalf of the Department of Justice, administered these fees.\textsuperscript{639}

In 1960 the Rehabilitation Act\textsuperscript{640} signaled a breakthrough for disability normalization in Danish disability law.\textsuperscript{641} The Disablement Insurance Tribunal was now able to grant financial assistance, in the form of a loan for the purchase of a motor vehicle. Under Section 8 of the Act, the primary group eligible for such assistance comprised those handicapped by physical or mental defects who had use for a motor vehicle for journeys to and from work, to and from an educational facility or in order to establish an independent business or profession. The loan could only be granted for the purchase of a brand new motor vehicle and required an instrument of debt to be issued to the Disablement Insurance Fund. A loan could be granted up to a fixed maximum amount and was repayable in monthly installments. Around 50\% of the loan was, however, free from repayment until such time as the vehicle was sold or replaced. A loan could be renewed at the earliest four years from

\begin{itemize}
\item \textsuperscript{637} Invalideforsikringsretten.
\item \textsuperscript{638} Report on Simplification and Clarification of the Rules on Assignment of Cars to the Handicapped, p 17 f.
\item \textsuperscript{639} Report on Simplification and Clarification of the Rules on Assignment of Cars to the Handicapped, p 18.
\item \textsuperscript{640} Lov nr 170 af 29/04/1960 om revalidering.
\item \textsuperscript{641} See for example Ketscher 2008, p 391 f.
\end{itemize}
the date of registration of the original vehicle. When the old vehicle was sold, the proceeds from the sale were paid to the Fund and that amount was deducted from the rest of the loan or, if the proceeds were greater than the remainder of the loan, could be used to reduce the part of the new loan that had to be repaid.\textsuperscript{642} As a consequence, while the private individual bought, used and was generally responsible for the vehicle, its ultimate ownership was not entirely clear.

Under Section 3 of the Rehabilitation Act a loan could also be granted for the purchase of motor vehicles as assistive technological devices, in those cases where it was deemed that a vehicle could significantly reduce the impact of a permanent invalidity. The loan was connected to a tax refund and the benefits (loan and tax refund) could be granted for 100%, 75% or 50% of the cost of the vehicle. Full benefits could be granted to those who, due to a serious medical invalidity, were completely unable to get to and from work or exercise a profession without a motor vehicle of their own. The 75% benefits could be granted to people who, due to serious invalidity, could not without considerable difficulties get to and from work or exercise a profession without a motor vehicle of their own. Finally, the 50% benefits could be granted in cases where the vehicle was necessary but the perceived invalidity less serious. In certain cases benefits could also be granted when the vehicle was necessary to get to and from medical treatment or some kind of occupation that, while not being a full-time profession, still contributed substantially to the person’s income. It was not a requirement that the eligible person had a driver’s license and could drive the vehicle; thus benefits could be granted, for example, to children.\textsuperscript{643}

In the 1970s the system was decentralized and the counties and municipalities became increasingly responsible for services and benefits for disabled inhabitants. In October 1976 the Social Benefits Act\textsuperscript{644} came into force and the old system under the Rehabilitation Act was abolished, including certain tax refunds, although a few remained. Car allowance could now be granted to private individuals under two separate sections of the Social Benefits Act, Section 42 (later Section 43) and Section 58. Private individuals directed their applications to the municipal social services, which forwarded the applications to the county rehabilitation and pension administration which evaluated the applications and made the decisions. Section 42 stipulated that benefits for the acquisition of a motor vehicle could be granted to persons with reduced earning capacitites due to disablement as a means of assisting the

\textsuperscript{642} Report on Simplification and Clarification of the Rules on Assignment of Cars to the Handicapped, p 18 f.
\textsuperscript{643} Report on Simplification and Clarification of the Rules on Assignment of Cars to the Handicapped, p 19.
\textsuperscript{644} Lov nr 333 af 19/06/1974 om socialt bistand.
individual in establishing an independent trade or business. A prerequisite for car allowance under Section 42 was that such a vehicle was to be used in the trade or business; typically this meant a delivery van, a taxi or some other commercial vehicle. Section 42 stipulated that if it seemed reasonable, given the person’s estimated future earning capacity, the benefit could take the form of a loan. The loan would normally be interest-free and the amount would be in proportion to the purchase cost of the vehicle. Unlike the earlier system the loan was to be repaid in full, and a mortgage on the vehicle should also be issued.645

Section 58 of the Act was the main legislation concerning technical assistive devices for people with disabilities, and motor vehicles were only one of the many types of devices paid for by the public authorities to private individuals. An ideological distinction was made in the legislative process, probably inspired by the normalization principle, between special assistive technological devices that were produced and adapted for people with disabilities alone, and general devices that were commonly in use in modern society, for example cars. The idea was that there would be a much more generous scheme for special devices than for general devices. As a rule, general devices should not be provided free, or at least not without some economic effort on the part of the private individual.646

Car allowance, under Section 58, could be granted to those who, due to either invalidity, serious invalidity or very serious invalidity, were either unable to travel or able to travel but only with considerable difficulty. The allowance could be granted for two general purposes: for work or education or for leisure. Benefits for work or educational purposes could be granted to persons with any degree of invalidity, but only if it was considered necessary for them to have a motor vehicle to either have a job or to get to and from an educational facility. If the purpose was to get to and from work, a prerequisite was that the applicant either had or could be expected to have an income from the work sufficient to be self-supporting. If the purpose was to get to and from education, a prerequisite was that the education must be considered materially important for the applicant’s ability to later take up a trade or profession with the possibility of making a living. Benefits for leisure purposes could only be granted to those who, due to a very serious invalidity, were otherwise unable to travel. It was also important that a vehicle would substantially ameliorate the consequences of the invalidity or improve the

quality of everyday life. The vehicle should also increase the applicant’s possibilities to be more self-reliant in everyday life.\textsuperscript{647}

A prerequisite for car allowance was always that the vehicle was only to be used when the eligible disabled person traveled in it either as the driver or a passenger (except for journeys to car repair shops or suchlike). Children of all ages who lived with their parents could be granted benefits for leisure purposes. However, this meant that the parents could not use the vehicle independently, that is, the child had to be a passenger in the vehicle everytime it was used. In assessing the need in all cases the focus was on whether a motor vehicle was the sensible solution to the transport needs, but was also on the nature of the impairment, for example the severity and the prognosis.\textsuperscript{648}

People with disabilities who lived in institutions, nursing homes and such were not eligible for benefits at the inception of the Social Benefits Act in 1976 but gradually became eligible during the following years. From the mid-1980s onwards no special regulations applied to people who lived in residential institutions, nor did admission to such an institution mean that the person no longer met the eligibility criteria.\textsuperscript{649}

The car allowance under the new Social Benefits Act typically came in the form of an interest-free loan that was also partially free from amortization. The loan had a limit which was calculated on the basis of the price of a medium-sized car without any particular extra equipment. Half of a regular loan within the limit was free from amortization over a four-year period and this part of the loan was reduced by 1/48 every month. The other half was repaid in monthly installments. Eligible persons who so wished could apply for and receive only the amortization-free half of the loan. Those whose invalidity was less serious, who were eligible for car allowance for work or educational purposes, typically received a loan of up to 75\% of the lending limit. Of these loans 1/3 was amortization-free after four years. In all cases, when the four-year period ended, the vehicle could only be sold or registered to somebody else with the permission from the county rehabilitation and pension administration. In 1979 it was established that an eligible person could use whatever proceeds were made on the sale of an old vehicle to acquire a more expensive vehicle, that is, the proceeds from the sale of the old car could supplement the loan on a new car so that the person could purchase a more expensive vehicle than the lending limit would otherwise allow. This worked both ways, as the eligible

\textsuperscript{647} Report on Simplification and Clarification of the Rules on Assignment of Cars to the Handicapped, p 22.

\textsuperscript{648} Report on Simplification and Clarification of the Rules on Assignment of Cars to the Handicapped, p 22 ff.

\textsuperscript{649} General Guidelines nr 19024 of 28/03/1984.
person was also required to use the proceeds for a new vehicle and not for what was considered irrelevant purposes.\footnote{Report on Simplification and Clarification of the Rules on Assignment of Cars to the Handicapped, p 23 f.}

During the 1980s several small changes to car allowance came into effect. From 1981 the four-year period between renewals was prolonged to six years. Further, from that year all net proceeds from the sale of a vehicle bought with help of benefits were deducted from the lending limit. In 1981, for the first time, a means-test component was introduced, insofar as the eligible person’s income now had an impact on the proportions of the loan that were amortization-free and repaid in monthly installments, respectively. In 1984 a somewhat rewritten version of Section 58 came into effect and where the earlier text mentioned a motor vehicle the new version specifically mentioned a car.\footnote{Lov nr 580 af 19/12/1983.} The requirement that the eligible person always had to be either a passenger or the driver was abolished. Other changes included, for example, allowing a larger amount than the lending limit to be granted when the nature of the impairment made it necessary to buy, for example, a bigger or otherwise more expensive vehicle than an ordinary private car. In these cases the difference between the lending limit and the actual cost was granted as an interest-free and amortization-free loan.

One important change in 1984 was that the degrees of invalidity were totally abolished as eligibility criteria and replaced with the notion of functional capacity. A guiding principle behind the new Social Benefits Act had been not to put too much weight on the reasons behind a need, but to focus rather on the actual need itself.\footnote{Ketscher 2008, p 393 ff and Wennberg 2008, p 100.} The idea was to move away from an objective evaluation of the person’s health and condition towards a more environmentally-oriented evaluation of the consequences for the individual, including the possibilities for increasing independence and self-reliance. Thus, the need should be evaluated comprehensively based on how the applicant actually managed everyday life with a disability.\footnote{General Guidelines nr 19024 of 28/03/1984.}

From 1987 onwards the eligibility criteria were defined in Sections 1 and 2 of Executive Regulation nr 886\footnote{Bekendtgørelse nr 886 af 11/12/1986 om støtte til køb af bil efter bistandslovens § 58.} so that car allowance could be granted to persons with a lasting reduction in the functional capacity which, to a considerable degree, reduces the ability to travel or, to a considerable degree, renders difficult the possibility of getting or keeping a job or completing an
education without the use of a car. To receive benefits the applicant’s need had to fit into one of three categories of need for transportation:

1. In connection with a trade or profession, from which the applicant gains a substantial contribution to their provision

2. In connection with an education aimed at future prospects for work and income

3. Where granted benefits would substantially ease the consequences of the impairment and make everyday life easier

The third category of need was explicitly aimed at leisure activities which were perceived to be an important aspect of quality of life. Examples included sports activities, visits to family or a holiday cottage. An important specification was that car allowance could only be granted after a comprehensive evaluation, which included age, health, general condition and other circumstances, had found that other forms of transportation could not meet the transport needs of the applicant. The applicant’s total need for transport should be weighed against existing transport provision, including actually available general public transport and other transport solutions, such as taxis, leased cars or transportation provided by residential institutions, schools or other facilities. As a consequence, the impairment needed for eligibility typically had to be more serious for applicants living in urban areas than for those living in rural areas with few other possibilities for transportation.\(^655\)

Under Executive Regulation nr 886 car allowance came as an interest-free loan to an amount that was set by the national government, but maximally the actual purchase cost of the car. The loan could only be granted for the purchase of a new car straight from the factory, either after receiving car allowance or within 12 months before the application at the most. As before one half of the loan was amortized in monthly installments over the six-year period and the other half was written off with \(1/72\) per month. For people with incomes over a limit set by the national government the part of the loan to be amortized increased proportionally and the part to be written off was decreased proportionally. Conversely, for those enrolled in education the part of the loan to be amortized could be amortization-free and written off for the duration of the education. The net proceeds from selling an old car could be used when purchasing a new car and/or be deducted from the part of the loan to be amortized. When the nature of the impairment caused a need for a bigger

\(^{655}\) General Guidelines nr 19024 of 28/03/1984.
or more expensive car an interest- and amortization-free loan based on the price of the cheapest and most suitable vehicle could be granted to cover the extra costs. This extra loan was also written off at 1/72 monthly over the six-year period.

A person eligible for car allowance could also receive a cash benefit to cover the actual costs for driving instruction and registration. A cash benefit to cover the actual costs could also be granted for any necessary adaptations and special equipment for a car. It was not necessary to be eligible for car allowance to receive the cash benefit for necessary adaptations and special equipment; it was sufficient that the person could show a need.

All applications for car allowance were to be directed to the municipal social services. The municipal authorities evaluated the applicant’s situation and the circumstances concerning the application, and then forwarded the matter to the county rehabilitation and pension board which made the formal decision to grant or refuse the car allowance. Under the Executive Regulation issued by the national government a decision by the county board could be appealed to the National Social Appeals Board\textsuperscript{656} by the applicant within four weeks of receiving the county’s decision.

In July 1998 the Social Benefits Act and the Executive Regulation nr 886 were replaced by the new Social Services Act\textsuperscript{657} and Executive Regulation nr 122\textsuperscript{658}. Section 1 of the new Act stated the general objectives, which included providing for the needs stemming from reduced physical or psychological capacity. The aim of these provisions was to increase the possibilities for private individuals to cope on their own, to ease the conditions of everyday life and to increase quality of life. To these ends the provisions should be adapted to the needs of the private individual.

The new Act differentiated between technical assistive devices, durable consumer goods and car allowance.\textsuperscript{659} Section 99 of the Act became the principal regulation governing car allowance and stipulated that responsibility for decisions about the benefit rested with the counties, which could grant car allowance to persons with lasting reduction in the physical or psychological functional capacity, that considerably reduced their ability to travel, or to a considerable degree, rendered their possibility of getting or keeping a job or completing an education difficult without the use of a car. As

\textsuperscript{656}Den sociale ankestyrelse, now Ankestyrelsen.

\textsuperscript{657}Lov nr 454 af 10/06/1997 om social service.

\textsuperscript{658}Bekendtgørelse nr 122 af 19/02/1998 om støtte til køb af bil efter servicelovens § 99.

\textsuperscript{659}”Hjælpemidler, forbrugsgoder og støtte til bil” in Danish.
usual, the national government was given wide regulatory powers regarding the details of eligibility and conditions. While the new eligibility criteria differed somewhat from those in the earlier Executive Regulation nr 886, the government intended no change in the scope of eligibility.\textsuperscript{660} With the reform the county rehabilitation and pension boards were abolished. The counties, however, could still only make a decision after referral, now from the municipality where the applicant resided. The benefit was granted as an interest-free loan within a specified limit. In 1998 the limit was DKK 114 000\textsuperscript{661}. In special circumstances caused by reduced functional capacity, an interest- and amortization-free loan could be granted to cover the difference between the limit and the actual cost of purchase.

The counties first became responsible for granting car allowance as a result of several disability organizations arguing for decisions to be made on the regional, rather than the municipal level. This was due to the perceived need for expertise and special knowledge about disability which was considered easier to obtain in the counties with relatively larger populations than in the many smaller localities.\textsuperscript{662} However, under Section 99, the municipalities could still decide about relief and postponements of repayment as well as completely write off loans. Only in January 2007 did responsibility for the car allowance become entirely municipal.\textsuperscript{663}

In Section 99 the national government was explicitly given wide regulatory powers on a number of details, for example specific eligibility criteria for car allowance, repayment of loans, prerequisites and time limits regarding renewed benefits. The government could also regulate benefits for necessary adaptation, including the extent to which the applicants themselves would have to contribute. Sections 1 and 2 of Executive Regulation nr 122 stipulated that the specific prerequisite for benefits, for persons with a lasting reduction in their physical or psychological functional capacity which considerably reduced their ability to travel or to a considerable degree made it difficult to get or to keep a job or to complete an education without the use of a car, was a need for transport that fell into at least one of three categories:

1. To and from work, from which the applicant derives a substantial contribution to their provision

2. To and from an education which is aimed at future possibilities for work and income

\textsuperscript{660} LFF 1997-04-16 nr 229, Bemærkninger til de enkelte bestemmelser, Til § 97.
\textsuperscript{661} Bekendtgørelse nr 122 af 19/02/1998 om støtte til køb af bil efter servicelovens § 99.
\textsuperscript{662} LFF 1997-04-16 nr 229, Bemærkninger til de enkelte bestemmelser, Til § 97.
\textsuperscript{663} Lov nr 573 af 24/06/2005.
3. That to a considerable degree can ameliorate the consequences of the impairment and so to a considerable degree make everyday life easier.

In any case car allowance could only be granted when the applicant’s comprehensive need for transportation was not appropriately met by any type of transport services, including individual transport services for people with severe mobility impairments. Whether a need for transport was appropriately met by other means should be based on an evaluation of the applicant’s age, health and general situation.

Section 4 of Executive Regulation nr 122 laid down that car allowance was still an interest-free loan and that the details regarding repayment etc, of the loan were not significantly different from the regulations under the Social Benefits Act. The loan was available to everyone who met the eligibility criteria. As before, half the loan was to be repaid in monthly installments of 1/72 of the sum, and half was to be written off at the rate of 1/72 of the sum each month. Persons eligible for car allowance under category 2 could be granted a period of grace concerning repayments for the duration of the education. After finishing the education the sum corresponding to the monthly installments during the education was written off. A means-test was applied regarding repayment so that for eligible persons whose yearly income was above a certain cut-off point (DKK 136 000 in 1998) the part of the loan which was to be repaid was increased by 1/5 of the excess amount. The part of the loan which was written off was conversely decreased in the same way.

8.2.1 Vehicles as Technical Assistive Devices and Durable Consumer Goods

As the Social Services Act came into effect in 1998, benefits could be granted under Sections 97 and 98 for the purchase of smaller and lighter vehicles than cars, for example three-wheeled mopeds and scooters. Sections 97 and 98 dealt with technical assistive devices and durable consumer goods respectively. The municipalities, or in certain cases the counties, could grant such objects to three categories of eligible people:

1. When the object to a considerable degree may ameliorate the lasting consequences of the reduced functional capacity

---

664 General Guidelines nr 52 of 05/03/1998.
2. When the object to a considerable degree may make everyday domestic life easier

3. When the object is necessary for the eligible person to have a job

As with car allowance the national government was given wide regulatory powers regarding eligibility and the extent of the benefits. In Section 1 of Executive Regulation nr 123\(^{665}\) the demarcation line between technical assistive devices and durable consumer goods was drawn so that technical assistive devices were described as products manufactured with the intent of being a remedy for either a physiological or psychological impairment, whereas durable consumer goods were described as products manufactured and marketed toward regular use in the general population.

Ideological ambitions were that the eligible person should be allowed the possibility to live normally, and as independently as possible, and free from the need of support from other people in everyday life. The national government remarked that the type of impairment should not be in focus, but rather the individual consequences of the reduced functional capacity. While durable consumer goods were not aimed specifically at people with disabilities, certain durables could in many instances compensate for the reduction in functional capacity. Such instances could for example include kitchen machines or white goods.\(^{666}\) Benefits should not be granted for purchase of consumer durables which were typically part of a household, such as ordinary chairs, tables, beds, telephones, TV-sets, VCRs etc, and which were normally available in most homes.\(^{667}\) The government noted that consumer durables which typically and normally existed in a household were subject to change over time, as people’s consumer habits changed, and also because of general development in society.\(^{668}\) The National Social Appeals Board has advised the municipalities to pay close attention to the extent of specialized consumer goods in people’s homes and the range offered to the general population.\(^{669}\) In 2000 three-wheeled electric vehicles, so-called electric scooters, were often considered to be technical assistive devices.\(^{670}\) From 2008, however, electric scooters were typically considered durable consumer goods, as the vehicles were now regarded as marketed toward

---

\(^{665}\) Bekendtgørelse nr 123 af 19/02/1998 om ydelse af hjælpemidler og forbrugsgoder efter servicelovens §§ 97 og 98.

\(^{666}\) General Guidelines nr 52 of 05/03/1998.

\(^{667}\) Bekendtgørelse nr 123 af 19/02/1998 om ydelse af hjælpemidler og forbrugsgoder efter servicelovens §§ 97 og 98.

\(^{668}\) LFF 1997-04-16 nr 229, Bemærkninger til de enkelte bestemmelser, Til § 96.

\(^{669}\) Ankestyrelsen 2007, p 38. See also Case 260-09 National Social Appeals Board.

\(^{670}\) Case C-30-00 National Social Appeals Board.
regular use in the population, and the vehicles are also readily available for purchase at retailers.\(^{671}\)

During the editing and consolidating process of the Social Services Act in 2005 the former Sections 97 and 98 were renumbered 112 (technical assistive devices) and 113 (durable consumer goods). The material scope was virtually unchanged, but the municipalities were given full responsibility for the benefits.\(^{672}\) The national government has issued Executive Regulation nr 1432\(^{673}\) and the General Guidelines\(^{674}\) directed to the municipalities concerning the applications and decisions about technical assistive devices and durable consumer goods.\(^{675}\) Due to the comprehensive nature of the General Guidelines, together with the fact that they are used by those who make the actual decisions to grant or refuse applications, the General Guidelines may be viewed as an important source of knowledge on the law in this field. The General Guidelines also set forth the ideological objective for the benefits so that the private citizen should be allowed the possibility to live normally, and as independently as possible, and to the largest extent possible free from the need of support from other people in everyday life, and also make sure that citizens with lasting reduction in the functional capacity may become or continue to be active on the labor market.\(^{676}\)

### 8.3 Car Allowance in Norway – Means-tested Benefits

At the end of the 1970s and the early 1980s, between 2 200 to 2 500 persons annually were granted car allowance for the purchase of cars, for special adaptation and equipment or to pay for driving instruction.\(^{677}\) In the year 2005 around 2 600 persons were granted car allowance from amongst almost 12 000 who applied.\(^{678}\)

During the 1950s some individual benefits were available for acquiring and maintaining private cars from the national government under the Assistance to the Blind and the Crippled Act\(^{679}\). These could include one cash benefit for

---

\(^{671}\) Cases C-42-08 and 29-10 National Social Appeals Board.

\(^{672}\) Lov nr 573 af 24/06/2005 om social service.

\(^{673}\) Bekendtgørelse nr 1432 af 23/12/2012 om hjælp til anskaffelse af hjælpemidler og forbrugsgoder efter serviceloven.

\(^{674}\) General Guidelines nr 7 of 15/02/2011 (Vejledning nr 6 til Serviceloven).

\(^{675}\) Benefits can also be granted under Section 24 of Executive Regulation nr 1432 in the form of transport reimbursement, covering certain costs for transportation in connection with the application, for example when the applicant has to travel to a testing facility in order to try out and/or adapt a specific object.

\(^{676}\) General Guidelines nr 7 of 15/02/2011, 3.

\(^{677}\) St meld nr 92 (1984–85), p 17.


\(^{679}\) Lov 16 juli 1936 nr 3 om hjælp til blinde og vanfore.
the purchase of the car, another to cover the customs fees for importing the car, and an exemption from certain fees and taxes, including registration fees, motor vehicle tax and fuel tax. To qualify as crippled under Section 3 of the Act the person concerned had to be considered helpless due to a congenital or acquired infirmity with functional disruptions to the supporting or moving organs. The benefits were means-tested, and limited to people who were considered dependent on a car for their work.

In January 1961, the Assistance to the Blind and the Crippled Act was abolished and replaced by the Rehabilitation Support Act. The aim of this Act was to assist people to stay part of the labor market and thus granted certain benefits for adaptations, vocational training and special technical assistive devices if they were of considerable importance for rehabilitation. As before, any benefits for the purchase of a car were related to the rehabilitee’s need for a car to be able to work or run a business.

In 1967 the benefits under the Rehabilitation Support Act were consolidated into the Social Security Act. The old benefits were continued under Chapter 5 Sections 2 and 3 of the new Act. Under Section 2 a person was eligible if, due to disease, injury or infirmity, their capacity to earn an income, or their choice of profession or workplace, was considerably and lastingly impaired. Benefits were granted under the premise that they would be an appropriate aid to the person in getting work or continuing a suitable employment. Section 3 stated that support could be granted either as cash benefits or as loans, to the extent considered necessary and appropriate, for travel, relocation, getting a job, starting a business or any other purpose of crucial importance for the eligible person’s occupational possibilities. This was interpreted as including the possibility to grant benefits for the purchase of a car. The Act gave the national government wide latitude to regulate the specifics regarding eligibility and the extent of the benefits.

At the inception of the Social Security Act all benefits for the purchase of a car were still entirely connected to the person’s need for a car in order to be able to work or run a business. In 1971 however, new eligibility criteria were brought in that significantly broadened the group of people potentially eligible for benefits. Chapter 5 Section 8 stated that the benefits under Section 3 were now also available to people whose general functional ability, due to

680 Ot prp nr 22 (1959), p 16.
681 Lov 22 januar 1960 nr 2 om attføringshjelp.
682 Lov 17 juni 1966 nr 12 om folketrygd.
683 See also Ot prp nr 17 (1965-66), p 38.
684 Lov 19 mars 1971 nr 40 om endringer i lov om folketrygd.
disease, injury or infirmity was considerably impaired. Section 8 also specifically stated that benefits under the Section should be granted without any consideration of the person’s possibilities of working. An age limit was, however, also set as Section 8 stated that anyone who became disabled after 70 years of age was not entitled to benefits. No lower age limit was established and children under 18 years could thus be eligible for benefits.685

Car allowance was still not to be found in the wording of the Act, but was made possible as a benefit under Chapter 5 Sections 3 and 8 by the executive regulations issued by the national government, Executive Regulation 9546686 for Section 3 and Executive Regulation 9687 for Section 8, respectively. The benefits from the national government available to the private individual in the 1970s came in several different forms:688

- Car purchase allowance in the form of an interest- and repayment-free loan
- Car purchase allowance in the form of a cash benefit
- Car purchase allowance in the form of an ordinary loan
- Benefits for adaptation and equipment of a car
- Benefits to cover the cost of driving instruction

In the 1980s Chapter 5 Sections 2 and 8 of the Social Security Act set out the general eligibility criteria for car allowance as applying to persons who:

1. due to disease, injury or infirmity had a lasting impairment regarding their capacity to earn an income and benefits were considered an appropriate way of helping the person to get work or keep a suitable job, or

2. due to disease, injury or infirmity had considerably impaired possibilities to choose a profession or workplace and benefits were considered an appropriate way of helping the person to get work or keep a suitable job, or

3. due to disease, injury or infirmity suffered a considerably impaired general functional ability and benefits were considered necessary and appropriate in order to improve their functional ability, without taking any consideration of their possibilities to work, but only if their functional ability became impaired before the age of 70 years.

685 See St meld nr 23 (1977–78), p 75.
686 Forskrift 24 november 1966 nr 9546 om attforingshjelp.
687 Forskrift 16 juni 1971 nr 9 om regler for ytelser til bedring av den alminnelige funksjonsevne.
688 See also St meld nr 92 (1984–85), p 18.
In 1983 the law, including case law, on car allowance was consolidated in Executive Regulation 3213\textsuperscript{689,690} The several forms of car purchase allowance were also at the same time consolidated into one form, an interest- and repayment-free loan. Section 1 of Executive Regulation 3213 set out specific eligibility criteria for car purchase allowance, and these have remained relatively stable with no major changes since they came into effect in 1983. Those eligible for car purchase allowance were those eligible for car allowance under Chapter 5 of the Act, who could show that they had a real and considerable need for transport, and whose impairments made traveling by general public transport either impossible or distressing to an unreasonable degree and who, due to lasting difficulties in moving about needed a car of their own to:

1. travel to and from a place of work or education, or
2. perform the function of a home worker, or
3. prevent or change the isolation of their existence, or
4. relieve the families in those instances where the impairment leads to a particularly heavy burden of care, and thus contribute to preventing admission to institutionalized care and suchlike.

Car purchase allowance could not be granted if the real and considerable need for transport could be covered by any other means, such as transportation by the person's family, special transport services for people with disabilities, or some other transport solution, regardless of whether that transport was supported by other public benefits.

Car purchase allowance came in the form of a means-tested, interest-free and repayment-free loan from the national government to the private individual. The loan was calculated on the price of the car, with an upper price limit set by the government. In 1986 the price limit was NOK 73 500\textsuperscript{691} and by 1990 the price limit was NOK 85 000\textsuperscript{692}. Benefits over and above the price limit could be granted under Section 4 of Executive Regulation 3213 when a more expensive car was considered necessary due either to demands from traffic authorities, or to maneuverability, provisions for getting in and out of the vehicle, the driver's seating in the vehicle, or the need to transport equipment or technical assistive devices needed by the applicants in order to move about

\textsuperscript{689} Forskrift 16 februar 1983 nr 3213 om stønad til kjøp av bil m v.
\textsuperscript{690} St meld nr 92 (1984–85), p 18.
\textsuperscript{691} Forskrift 20 desember 1985 nr 2278 om stønad til kjøp av bil m v Prisgrense.
\textsuperscript{692} Forskrift 18 desember 1987 nr 1102 om stønad fra folketrygden til kjøp av bil m v – prisgrense.
on their own or at work, or when such equipment was so bulky that there was insufficient room for the immediate family, and the need for transport of the equipment could not be covered by extra benefits for the purchase of a trailer.

Under Section 7 of Executive Regulation 3213 an applicant with very low or no income received a loan which was 100% of the approved sum for purchase. For applicants with higher incomes, the loan gradually decreased in stages. No car purchase allowance could be granted to applicants with an annual income of six times the so-called basic social security amount693 or more. In 1985 the basic social security amount was NOK 25 333, and thus the cut-off point for eligibility for car purchase allowance that year was an annual income of NOK 151 998. In 1990 the basic social security amount had risen to NOK 33 575 and the cut-off point accordingly to NOK 201 450.694

Benefits for adaptation and equipment of a car could be granted to cover the entire cost without means-testing, under Section 10 of Executive Regulation 3213 to applicants who were considered unable to drive their car without special installations or adaptations, or who needed special equipment for reasons of health, or who needed a trailer to transport equipment so as to leave room for the immediate family in the main vehicle. For such adaptations, installation and special equipment benefits could also be granted without means-testing to cover the costs of necessary repairs.

The earliest possible time for renewal of benefits under Section 6 of Executive Regulation 3213 was either:

- when the car had been driven 120 000 km since acquisition, or
- when the car had been used for six years and had been driven 60 000 km since acquisition.

These requirements had to be met even if the old vehicle had not been bought with any assistance from car allowance. Exceptions were only possible if changes in the person’s medical condition made it necessary to have a new vehicle.

Benefits for driving instruction could be granted under Section 11 of Executive Regulation 3213 to applicants who were eligible for car purchase allowance and needed special driving instruction. The benefits were means-tested and calculated using the same formula as for the car purchase allowance.

693 “Folketrygdens grunnbeløp” in Norwegian.
In 1993 Chapter 5 of the Social Security Act was changed and became two new chapters, Chapter 5A and Chapter 5B. The idea behind the editing process was to consolidate all the regulations concerning medical rehabilitation and improvements in general functional ability in everyday life to Chapter 5A, and all regulations concerning work-related rehabilitation to Chapter 5B. This proved to be impractical in the case of car allowance which was regulated entirely in Chapter 5A.\footnote{Ot prp nr 58 (1992-1993), p 10 and p 20 ff. See also Innst O nr 129 (1992-1993).} For the first time the car allowance was mentioned as such in the Act. According to the government, adding car allowance as an explicit right in Chapter 5A did not, however, have any material importance other than to illustrate what was already an established right under the government’s earlier executive regulations.\footnote{Ot prp nr 58 (1992-1993), p 22.}

Chapter 5A of the Act created two main groups of eligible people. To the first group car allowance could be granted as part of an ongoing medical rehabilitation under Chapter 5A Section 3. The general eligibility criteria for this group were regulated in Chapter 5A Section 2, and car allowance could be granted, to the extent considered necessary and appropriate, to a person who due to disease, injury or infirmity:

\begin{itemize}
  \item[a)] has suffered a lasting impairment of their ability to perform paid work, or
  \item[b)] has had considerably impaired possibilities to choose a profession or workplace.
\end{itemize}

The second group of eligible people was created in the Act under Chapter 5A Section 8. Car allowance could be granted, to the extent considered necessary and appropriate to increase the ability to cope with situations in everyday life, to a person who, due to disease, injury or infirmity had suffered a considerable and lasting general functional impairment. Car allowance could not be granted to anyone who first met these eligibility criteria after the age of 70 years.

The specific eligibility criteria for both groups of people eligible under the Act were set out in Executive Regulation 1231\footnote{Forskrift 22 desember 1993 nr 1231 om stønad til kjøp av bil m v.}. Under Section 1 car purchase allowance could be granted to a person, eligible under the Act, who could show a real and considerable need for transport, and whose impairments made going by bus, boat, train, tram etc either impossible or lastingly stressful to an unreasonable degree, and who due to lasting mobility difficulties needed a private car to:
a) travel to and from a place of work or education, or

b) perform the function of a home worker, or

c) prevent or change the isolation of their existence, or

d) relieve the families in those instances where the impairment led to a particularly heavy burden of care, and thus contribute to preventing admission to institutionalized care and suchlike.

Car purchase allowance was exclusively meant to be spent on purchasing a car. Under Section 14 of Executive Regulation 1231 vehicles other than cars could be acquired with the help of the car purchase allowance if the eligibility criteria in Section 1 were met with respect to the specific type of vehicle. Under Section 2 of Executive Regulation 1231 and Section 5 of Executive Regulation 1229 car purchase allowance could, under special circumstances, be granted to a person who was qualified under the Act but did not qualify under the special criteria in Section 1 of Executive Regulation 1231, in cases where a private car was of crucial importance for the person, either to complete rehabilitation or to be able to accept an offer of employment.

The eligible person was not necessarily allowed to choose any car available for purchase. Under Section 4 of Executive Regulation 1231 the national authorities responsible for car allowance could draw up contracts with importers and car dealers for the procurement of private cars and equipment. The vehicles thus purchased were considered the property of the national government and not of the eligible person. As a consequence used cars in good condition could be reassigned, that is, reissued to a second eligible person in cases when the car was no longer useful to the first eligible person. The eligible person could only buy a car not included in the procurement contract if there were special circumstances. In any case the national government, just as before, set a price limit: for example, NOK 132 000 in 1995, NOK 135 000 in 1996 and NOK 140 000 in 1997. This price limit could only be exceeded when a more expensive car was considered necessary due to:

a) demands made by traffic authorities, or

698 See also Forskrift 22 desember 1994 nr 1172 om endring i forskrift om stønad til kjøp av bil m.v.
699 Forskrift 22 desember 1993 nr 1229 om attføringshjelp.
700 Forskrift 22 desember 1994 nr 1173 om stønad fra folketrygden til kjøp av bil til funksjonshemmede – prisgrense.
701 Forskrift 20 desember 1995 nr 1139 om stønad fra folketrygden til kjøp av bil til funksjonshemmede – prisgrense.
702 Forskrift 23 desember 1996 nr 1374 om stønad fra folketrygden til kjøp av bil til funksjonshemmede – prisgrense.
b) due to the maneuverability of the car, provisions for getting in and out of the car, the driver’s location in the car, the transport of equipment necessary for the applicant to move about on their own or at work, or

c) when such necessary equipment as mentioned above prevents the person’s closest family from being in the car, and this need for transport cannot be met by benefits enabling the purchase of a trailer to transport the equipment, or

d) the car itself was purchased for a sum within the price limit, but the limit was exceeded due to freight costs.

Given that it was medically or otherwise possible for the person to drive the car, they had a duty under Section 5 of Executive Regulation 1231 to make sure that the car was registered as their car, and to either have a driver’s license or be willing to take the driving test as soon as possible after purchase of the car.

At the inception of Executive Regulation 1231 in 1994 the earliest possible time for renewal of benefits under Section 6 was, as before, either:

- when the car had been driven 120 000 km since acquisition, or

- when the car had been used for six years and had been driven 60 000 km since acquisition.

This mainly distance-based renewal rule was changed in 1995 to one that was purely time-based.\(^{703}\) From 1995 onward the earliest possible time for renewal of benefits under Section 6 was eight years after acquisition of the current car, regardless of whether or not this car was purchased with a car purchase allowance. Earlier renewals could be granted if a new vehicle was considered necessary due to changes in the person’s medical conditions. In those instances when a used car was ‘recirculated’ to a new person, the time of acquisition was regarded as the point in time when the car was first bought with car purchase allowance.

From January 1999 this time-based renewal period was changed from eight to nine years\(^{704}\), from January 2002 it was changed to ten years\(^{705}\) and it was changed again in January 2003 to eleven years.\(^{706}\) The increased time between

\(^{703}\) Forskrift 22 desember 1994 nr 1172 om endring i forskrift om stønad til kjøp av bil m v.

\(^{704}\) Forskrift 22 desember 1998 nr 1341 om endring av forskrift om stønad til motorkjøretøy eller annet transportmiddel.

\(^{705}\) Forskrift 13 desember 2001 nr 1387 om endring i forskrift om stønad til motorkjøretøy eller annet transportmiddel.

\(^{706}\) Forskrift 12 desember 2002 nr 1494 om endring i forskrift om stønad til motorkjøretøy eller annet transportmiddel.
renewals met with criticism from disability organizations. The organizations noted that the change shifted a considerable economic burden from the state to the eligible individuals. Ageing cars meant higher maintenance and insurance costs and also worse performance in traffic impacting, for example, on road safety.707

As before, car purchase allowance came in the form of a means-tested, interest-free and repayment-free loan from the national government to the private individual. The loan was calculated on the purchase cost of the car, within the set price limit. Under Section 7 of Executive Regulation 1231 an applicant with very low or no income received a loan which was 100% of the approved purchase sum. For applicants with higher incomes, the loan gradually decreased by stages. No car purchase allowance could be granted to applicants with an annual income of six times the so-called basic social security amount or more. For example, during the latter part of 1995 the basic social security amount was NOK 39 230708 and the cut-off point for car purchase allowance was thus an annual income of NOK 235 380. Although direct comparisons are somewhat difficult, the cut-off point at that time was rather close to the average annual Norwegian salary.709 This meant that car purchase allowance in the 1990s was almost exclusively a benefit for people with low or very low incomes.

The second form of car allowance, benefits for adaptation and equipment of a car, was not means-tested. The eligibility criteria for this form were regulated in Section 10 of Executive Regulation 1231. Benefits for adaptation and equipment of a car could be granted to a person who, due to disease, injury or infirmity, could not drive the car without the installation of special equipment or remodeling it. The benefit also included the possibility, under Section 12, of covering repair of any special equipment. In 1995 special equipment was clarified by the government to mean equipment not delivered from the factory as standard extra equipment.710

The third form of car allowance, benefits to cover driving instruction, could be granted under Section 11 of Executive Regulation 1231 to a person eligible for car purchase allowance. This benefit was means-tested and calculated using the same formula and thresholds, including the cut-off point, as the loan for car purchase allowance.

708 Skatteetaten (website).
709 Hansen & Skoglund 2003.
710 Forskrift 22 desember 1994 nr 1172 om endring i forskrift om stønad til kjøp av bil m v.
In 1997 the old Social Security Act was abolished and the current Social Security Act\textsuperscript{711} came into effect. At this time the national government replaced the old Executive Regulation 1231 with Executive Regulation 265\textsuperscript{712}. Under Chapter 10 of the new Act benefits could be granted for the purchase of a motor vehicle or some other means of transport. The government noted that the new regulations were only a consolidation of the existing law on car allowance, and that neither the forms of benefit nor the scope of eligibility were intended to be materially altered.\textsuperscript{713}

\textsuperscript{711} Lov 28 februar 1997 nr 19 om folketrygd.
\textsuperscript{712} Forskrift 25 mars 1997 nr 265 om stønad til motorkjøretøy eller annet transportmiddel.
\textsuperscript{713} Ot prp nr 29 (1995-1996), p 111.
9 Car Allowance as a Social Right in Sweden

Car allowance is regulated in the Social Security Act\textsuperscript{714}. Under Chapter 52 Sections 8 and 9 of the Act, car allowance can be granted for five specific purposes:

1. Acquisition of a private car class I, motorcycle or moped
2. Alteration of such a vehicle and costs incurred in connection with the alteration as well as adjustment and repair of the alteration
3. Acquisition of a special device on such a vehicle and costs incurred in connection with the acquisition as well as adjustment and repair of the special device
4. Driving instruction in connection with the acquisition of a motor vehicle
5. Acquisition of, alteration to, or acquisition of a special device for, another type of motor vehicle if there are special grounds due to the nature of the disability or other circumstances

The definition of a private car class I is to be found in the Road Traffic Definitions Act\textsuperscript{715}. Under Section 2 of that Act a car is basically a motor vehicle with three or more wheels or runners or tracks which is not a motorcycle or a moped. Cars are subdivided into private cars, trucks and buses. A private car is defined as a car with a maximum of eight seats in addition to the driver’s seat which is either set up mainly for the conveying of passengers or is permanently equipped as a living space with at least some permanent seats, permanent sleeping places (which may be seats that can be converted into sleeping places), permanent equipment for cooking and storage and tables. Such private cars are subdivided into class I and class II. A private car class II is a private car that is equipped with seats, sleeping and cooking places, storage and tables. A private car class I is then defined as a private car that does not belong to class II, that is, it is mainly set up for conveyance of passengers. In other words, a private car class I that may be bought and adapted using the car allowance benefit is an ordinary private car.

\textsuperscript{714} Socialförsäkringsbalk (2010:110).
\textsuperscript{715} Lag (2001:559) om vägtrafikdefinitioner.
Under Chapter 52, Sections 5 and 15 to 18 of the Social Security Act, car allowance comes in four different forms of cash benefits:

1. Basic allowance which is granted in full to everyone entitled to car allowance and is a benefit to be used for purpose 1 or 5, that is, acquiring the vehicle

2. Purchase allowance which is means-tested and is also a benefit for purpose 1 or 5, that is, acquiring the vehicle

3. Adaptation allowance which is a reimbursement for the actual costs incurred for purpose 2 and/or 3 or 5, that is, adapting the vehicle

4. Driving instruction allowance which is a reimbursement for the actual costs incurred for purpose 4, that is, attending driving school in connection with acquiring a vehicle

All applications are directed to, and all decisions are made by, the Swedish Social Insurance Agency, see Chapter 2 Section 2 of the Social Security Act. The Agency has issued the Regulation on Car Allowance and the General Guidelines on Car Allowance. The Agency has also issued Guidelines on the management and administration of car allowance. Due to their comprehensive nature, the frequent updates and the incorporation of important case law, coupled with the fact that they are used by those who make the actual decisions to grant or refuse applications, the General Guidelines and the Guidelines may be viewed as important sources of knowledge about car allowance law.

9.1 Car Allowance – a Rights/Duties Relation?

Under Chapter 5 of the Social Security Act, car allowance is considered a residence-based social security benefit, available to anyone residing in Sweden who meets the legal criteria for car allowance. The benefit is described as residence-based to meet the demands in the Regulation (EC) No 883/2004 on the coordination of social security systems in the EU. A person is considered as residing in Sweden if they are domiciled in the country. For people arriving in Sweden the general rule is that they are considered as residing in the country if they can be expected to stay for a minimum of one

716 Försäkringskassan.
717 Riksförsäkringsverkets föreskrift (RFFS 2004:7) om bilstöd.
Likewise, Swedish residents who leave the country are still considered as residing there if their stay abroad can be expected to last for a maximum of one year.

From Sections 1 and 2 of the Regulation it follows that a person may apply for either only basic allowance or for both basic and purchase allowances. The person may also apply for the adaptation allowance at the same time or separately. Only a person who has been granted adaptation allowance may be granted a new adaptation allowance for repairing and/or adjusting an adaptation or a special device installed and/or purchased with the original adaptation allowance. Chapter 52 Sections 6, 21, 23 and 24 of the Act lay down that the basic allowance and purchase allowance cash benefits are to be paid to the entitled individual only for vehicles acquired after the formal decision to grant car allowance. Further, the sum of the basic allowance and purchase allowance together must not exceed the purchase sum for the vehicle. If the entitled individual sells or otherwise disposes of the vehicle, the benefits will have to be refunded with certain time-based deductions unless there are special circumstances.

From the normative declarations in Chapters 5 and 52 of the Social Security Act it is clear that car allowance is a legal right of the private individual, bearing a corresponding duty for the national government to provide benefits. However, the rights/duties relation between the private individual and the state regarding car allowance is full of complexities.

9.2 Who Is Eligible for Car Allowance?

Car allowance can be granted to a person who, due to an impairment which is lasting, has considerable difficulties in moving about on their own or traveling by general public transport, according to Chapter 52 Section 2 of the Social Security Act. The first of the two basic requirements is that the impairment is lasting, that is, the impairment shall be either permanent or at least be present for the entire time that the vehicle can be expected to be in use. The applicant must be prepared to provide a doctor’s certificate attesting to the lasting character of the impairment.720

Whether an impairment is sufficiently lasting to qualify for car allowance has been tried several times in the administrative courts. A typical question seems to concern the medical prognosis of the impairment. With the consequence

that the applicant’s medical history and various doctors’ certificates and statements become important. For example, in a case from 1993 a parent applied for car allowance on the grounds that the child had severe asthma and allergies. The child had responded favorably to treatment and thus medical emergencies and hospitalizations occurred somewhat less frequently but despite the treatment it was obvious that traveling by public transportation could induce serious symptoms. That medical treatment could keep the symptoms at bay was considered a sign that the fundamental impairment was still present and lasting. The impairment was adjudged lasting and the parent was found to be eligible and entitled to car allowance.\textsuperscript{721} In a case from 2004 a woman with severe arthrosis in the knee had obvious difficulties in moving about on her own. It could not, however, be ruled out that an operation might improve her condition. The medical experts were not in agreement on this and in any case no operation was planned. Since no real improvement could be expected in the coming seven years, her impairment was found to be lasting and she was declared eligible and entitled to car allowance.\textsuperscript{722} In another but similar case from 2007 a woman with chronic rheumatoid arthritis and severe impairment of the hands and feet had been granted car allowance in 1999. When she applied for renewal in 2006 her application was refused on the grounds that her impairment was not lasting. Her feet had been operated on several times and while each operation presumably reduced the impairment and increased her mobility these effects were only temporary. Given that she had had several operations and that further operations would not improve her condition in any lasting way, her impairment was found to be lasting and she was deemed eligible and entitled to car allowance.\textsuperscript{723}

The main conclusion from case law is that, even when an exact time frame cannot be established, an impairment is to be considered lasting if it is probable that the applicant will have considerable difficulties in moving about for a long time;\textsuperscript{724} more precisely during the period which the allowance is supposed to cover, that is, formerly seven and currently nine years. Also, when judging lasting impairments it is not overly important whether treatment is available if it is to be expected that any positive effects will only be temporary in nature.\textsuperscript{725}

\textsuperscript{721} Case FÖD 1993:8.
\textsuperscript{722} Case 2965-02 Administrative Court of Appeal in Jönköping.
\textsuperscript{723} Case 6978-07 Administrative Court of Appeal in Gothenburg.
\textsuperscript{724} See also Case FÖD 1989:57.
\textsuperscript{725} See also Case 4002-07 Administrative Court of Appeal in Stockholm.
In analyzing case law the Guidelines by the Swedish Social Insurance Agency find that, among other things, the following aspects have been important when determining how lasting a person’s impairment is:

- Whether the impairment and the symptoms have been persistent for a long time
- Whether treatment has been tried but symptoms remain
- Whether further treatment cannot be expected to substantially improve the ability to move about
- Whether the impairment is likely to get worse over time
- Whether there is nothing specific to indicate that the ability to move about will substantially improve

The other basic requirement for granting car allowance in Chapter 52 Section 2 of the Act is that the lasting impairment shall lead to considerable difficulties either moving about on their own or traveling by general public transport. The impairment itself shall be the cause of the difficulties. The scarcity or irregularity of public transportation is not considered a valid cause of the difficulties. The ability to move about on one’s own is evaluated considering all available technical assistance, such as wheelchairs, walkers, crutches etc, but without considering any human aid, such as that from assistants and escorts. Thus, a need for technical assistive devices cannot in itself constitute considerable difficulties in moving about on their own.

In case law it seems that when a person can typically walk a few hundred meters without major problems they are not viewed as having considerable difficulties in moving about. When, on the other hand, a person may be able to walk some distance but any mobility problems are compounded with, for example, balance difficulties, dizziness, nausea, pain etc, the problems taken together may be viewed as having considerable difficulties in moving about on their own.

---

Considerable difficulties in using general public transport are evaluated taking into account all available help, including human assistance. The Guidelines point to three situations constituting considerable difficulties:

- Mobility impairments, causing problems getting on and off, paying, sitting and standing
- Difficulties being in public environments, for example psychological disorders or asthmatic problems
- A combination of both the above

Mobility impairments is not to be understood too narrowly. In a case from 1995 a young man had accidentally suffered amputation of both his arms. While otherwise healthy and with no specific problems moving about it was obvious that, when riding on public transportation, tasks such as paying fares, holding on, carrying any baggage etc, would be very complicated for him. It was not shown that any particular technical assistive device could help him overcome these problems. He was judged to have considerable difficulties in using general public transport and was found eligible and entitled to car allowance.\(^{731}\)

Difficulties being in public environments is also a broad criterion including many possibilities. In case law not only psychological, asthmatic or allergic problems have been judged to cause considerable difficulties in using general public transport but also, for example, intestinal disorders.\(^{732}\) Difficulty being in public environments may also be a ground for granting car allowance as a preventive measure, for example, when a person may or may not have an impairment that prohibits using public transportation, but that person’s health may be jeopardized if there is a significant risk of infection.\(^{733}\)

Children’s impairments are evaluated on the same grounds as adult impairments. The government has noted that while it can be argued that all families have some difficulties in moving about and traveling with small children, the focus for receiving car allowance is on children with lasting impairments leading to considerable difficulties for the child and the parent together to either move about or to use general public transport.\(^{734}\)

---

731 Case RÅ 1995 ref 49.
733 Case FÖD 1991:30.
the child and the parent can move about and travel together basically on the
same conditions as most other parents and children car allowance cannot be
granted, even if the child has severe disabilities and medical problems that
affect many other aspects of everyday life in the family.735 Nor will car
allowance be granted on cumulative grounds when more than one child in the
same family is disabled; at least one child still has to meet the criterion of a
lasting impairment that leads to considerable difficulties either in moving
about together with a parent or in using public transportation together.736

9.2.1 Five Categories of Eligibility

Once it is established that a person has a lasting impairment causing
considerable difficulties in moving about on their own or traveling on general
public transport, the next step in the qualification process comes: assessment
of eligibility category. A person can meet the eligibility criteria in more than
one category simultaneously and it is therefore important that every eligible
applicant obtains entitlement under the category that is the most beneficial
for them.737 Five specific categories are defined in Chapter 52 Sections 3, 10
and 11 of the Social Security Act:

1. A person who is under 65 years of age, and who relies on such a vehicle as is
   mentioned in Sections 8 and 9, and being reliant on the vehicle either for fully
   or substantially providing for themselves through work, or for completing
   vocational education or rehabilitation while receiving either rehabilitation
   grant under Chapter 31 of the Act or activity grant under national government
   regulations

2. A person who is under 65 years of age, and after receiving car allowance under
   category 1, is granted either sickness compensation or activity compensation

3. A person who is over 18 but not yet 50 years of age

4. A parent who meets the criteria in Section 2, and who has a child not yet 18
   years of age, who lives with the child, and who needs a vehicle in order to
   move about together with the child

5. A parent who has a child who meets the criteria in Section 2, and both parent
   and child reside in Sweden and live together, and the parent needs a vehicle
   in order to move about together with the child

735 Case FÖD 1989:51.
736 Case 1290-2000 Administrative Court of Appeal in Stockholm.
Category 1 is the largest category, measured in terms of the number of entitlements generated each year in every category. The main question regarding category 1 is to what extent a vehicle can support the private individual’s position on the labor market. The government has noted that it is important that the employment, education or rehabilitation is not too brief, but continues for some time. The General Guidelines define this as at least six months from the date the application was received by the Agency. Vocational education is a fairly broad notion. It includes both preparatory education at secondary school level or university level and regular occupational training and encompasses both theoretical and practical education.

From case law it can be concluded that the vehicle must not necessarily be used to drive to and from work, but that it is enough that the vehicle is of use to the person in the work situation. Car allowance has been granted to a man who planned to retire but who wanted to continue working on a freelance consulting basis. Another man who was on sick leave at the time of application and after a while received early retirement benefits was refused car allowance on the grounds that he was not reliant on a car to provide for himself. A woman who had full early retirement benefits also had a supplemental income from work, contributing around 11% of her total income. While she unquestionably needed a car to work, she was refused car allowance on the grounds that the supplemental income was too small to meet the criterion for substantially providing for oneself through work.

Persons eligible and entitled to basic allowance under category 1 are the only group who can receive driving instruction allowance, and only then if the person is either unemployed or at risk of becoming unemployed, and if it is expected that the driving instruction will lead to permanent employment, see Chapter 52 Section 14 of the Act. To qualify as unemployed the person must be actively looking for gainful work and be enrolled at the Swedish Public Employment Service. To qualify as at risk of unemployment the person must of course have a job and must be at risk of losing that job. To meet the criterion of expecting permanent employment, the expected employment need not be an actual available position, permanent or otherwise, but there

738 Sveriges officiella statistik (website).
741 Case FÖD 1990:12.
742 Case RÅ 1996 not 169.
743 Case RÅ 1997 ref 55.
744 Arbetsförmedlingen.
must be the expectation that any new employment will last for at least six months.\textsuperscript{745}

Category 2 focuses explicitly on people who have left the labor market while still under the general retirement age of 65. Although it is enough to have one earlier entitlement under category 1 to qualify for category 2, it is perfectly possible to apply several times under category 2, as long as the applicant meets the age and social benefits requirements. People who received car allowance under the old system, before the reform in 1988, also belong to category 2.\textsuperscript{746}

In categories 1 and 2 car allowance can also be granted to individuals who do not have a driver’s license and will not be driving the vehicle, see Chapter 52 Section 13 of the Act. It is enough to show that someone else, for example a personal assistant, will be able to drive the vehicle.\textsuperscript{747}

Category 3 provides young people without any existing connection to the labor market with the possibility of receiving car allowance. It also provides opportunities for benefits to persons enrolled in theoretical studies, for example at the universities. The government expressed the hope that eligibility under this category would help young people to participate in society and facilitate meaningful social contacts, thus increasing their possibilities for both jobs and education.\textsuperscript{748} In category 3 it follows from Chapter 52 Section 13 that the entitled individual must intend to drive the vehicle. To be granted car allowance the applicant needs to have either a driver’s license valid for the intended vehicle or permission to take a driving test. In the latter case the entitlement may be granted with the prerequisite that the entitled individual must show a valid driver’s license before the permission period expires. In certain instances the applicant will need a specially adapted vehicle to even begin driving instruction. In these cases car allowance can be granted to the individual without prerequisites.\textsuperscript{749} However, if the Agency, after hearing from the Swedish Transport Administration\textsuperscript{750}, concludes that all efforts by the applicant to secure a driver’s license are without any prospect of success, the car allowance might be refused on these grounds.\textsuperscript{751}

\textsuperscript{747} See also Prop 1987/88:99, p 13.
\textsuperscript{748} Prop 1987/88:99, p 15.
\textsuperscript{749} SfU 1987/88:23, p 11.
\textsuperscript{750} Trafikverket.
Regarding the age limits in categories 1, 2 and 3 it follows from case law that the age requirement only has to be met at the time of application. Car allowance is still to be granted even if the applicant turns 65 or 50 years of age, respectively, after applying but while the application is still being processed by the Agency.\textsuperscript{752} As early as 1988 the government made clear that individuals near the age limits would be fully eligible and would not have to return any previously granted benefits when they passed the age limits.\textsuperscript{753}

Chapter 52 Section 4 of the Act lists four groups, other than biological parents, who are eligible as parents in categories 4 and 5:

1. Someone who is not parent but who has legal custody of the child
2. A current or former spouse of a parent, or a person with whom the parent had children, if they cohabit on a permanent basis
3. Someone who permanently takes care of and raises a child with the aim of adopting it
4. Someone who, under other circumstances, permanently takes care of and raises a child in their home, if the child is expected to be placed there for at least three years

The second group were already eligible as parents in 1988, but parents living in civil partnerships were first put on an equal footing with married parents by the now obsolete Civil Partnership Act\textsuperscript{754}; under the now sex neutral Marriage Code\textsuperscript{755} all married parents are defined as such, regardless of sex. Groups 1, 3 and 4 were new in 2007. Adoptive parents were already eligible as parents in 1988 and the new third group increased eligibility for the period when the child had de facto moved to its new home, but before the formalities of adoption were finalized. The widened eligibility for people who are not biological but acting parents was deemed necessary for proper implementation of Article 23 of the UN Convention on the Rights of the Child. Before the changes in 2007 for example foster parents and those awarded legal custody of a child had not been eligible.\textsuperscript{756} These inequities were criticized from the perspective of the best interest of the child.\textsuperscript{757} Another change in 2007 was that all entitled individuals would now receive full basic allowance.

\textsuperscript{752} Case FÖD 1990:12, Case RÅ 1997 ref 55 and Case 3593-09 Supreme Administrative Court of Appeal.
\textsuperscript{754} Lag (1994:1117) om registrerat partnerskap.
\textsuperscript{756} See for example Case FÖD 1990:5.
\textsuperscript{757} SOU 2005:26, p 184 ff.
Category 4, disabled parents with children, generates the smallest number of entitlements among the five categories as most people who meet the criteria in category 4 also meet the criteria in one or more of the first three categories. However, car allowance can be granted as long as any child of the disabled parent is aged 17 years or younger and there is no age limit at all for the parent. Category 5 however, parents with disabled children, generates the second largest number of entitlements.758

Regarding the criterion of the parent and child living together the government noted that this means a constant need for mobility assistance in everyday life. This shall not be construed to mean that this need must occur every single day; it is sufficient that the need occurs on a regular basis. The government exemplifies such a constant need by citing a child who lives in a school boarding house during the weeks but regularly comes home for weekends and holidays.759 In case law a mother and a child were found to be living together when the child was home every other weekend.760 When, however, a child had moved to her own apartment, albeit adjacent to her father’s and in the same building, the child was considered to be living on her own.761 When a child does not live under the same roof as the parent, any assessment will have to consider how constant the need for mobility assistance is, how close the residences are to each other and to what extent the child leads an independent and autonomous life in the separate residence.762

In a family where both parents live together with the child there is typically a need for only one car allowance, as the benefit focuses on the need of the child and parent to move about together. When the parents live separately from each other and have shared custody of the child there might be a need for more than one vehicle.763 In case law car allowance has been granted to both parents separately where the child, after the parents’ divorce, first lived with one parent and then with the other764 and where the divorced parents had joint custody of the child.765

9.3 Impact of Funding on the Right to Car Allowance

Maximum basic allowance is currently SEK 60 000 for all motor vehicles except motorcycles and mopeds. For motorcycles the maximum amount is SEK 12 000 and for mopeds SEK 3 000, see Chapter 52 Sections 15 and 16 of the Social Security Act. The maximum purchase allowance is SEK 40 000. These sums were set by the government in 1991\textsuperscript{766} and have not been changed since. As a comparison the average Consumer Price Index (CPI) with fixed index numbers (1980=100) was 227.2 in 1991 and 299.66 in 2009. The index cost for purchasing vehicles, according to the annual index averages for main groups and subgroups in the CPI (1980=100), was 241.6 in 1992 and 265.32 in May 2010.\textsuperscript{767} These numbers indicate that while prices for consumer goods have generally increased in Sweden since 1991/1992, the costs of purchasing vehicles has increased somewhat less than for other products. Consequently the actual cash benefit has probably not been significantly undermined. Studies show that while owning and driving a private car is a considerable financial burden on the private individual, car allowance is an important financial relief for drivers with disabilities.\textsuperscript{768} Adaptation and driving instruction allowances are benefits which reimburse actual costs, and so are not subject to any depreciation.

Cars are technical products and subject to the wear and tear of everyday life. It is thus in the nature of car allowance that private individuals will apply anew for benefits at regular time intervals. At the inception of the new benefit in 1988 the earliest possible time for renewal was set at seven years. Currently, under Chapter 52 Section 7 of the Act, basic and purchase allowances may be granted at the earliest nine years after the previous grant of either one. When discussing time intervals between renewals a government committee pointed to the presumed increase in quality in modern private cars over time, arguing that this would allow for somewhat longer time periods. The committee also pointed to Norway and the corresponding 11-year rule in that country.\textsuperscript{769}

Three exceptions to the 9-year rule allow for earlier renewal. Either if renewal is necessary from the perspective of traffic safety or medical considerations or if the vehicle has been driven at least 180 000 km since either basic or purchase allowances were granted.

\textsuperscript{767} Statistiska Centralbyrån 2002 and 2010.
\textsuperscript{768} SOU 2005:26, p 85 ff.
\textsuperscript{769} SOU 2005:26, p 218 ff, see also p 67 ff.
The perspective of traffic safety does not mean that the age of the vehicle or some other circumstance are grounds for an exception. It is, rather, the needs coming from the applicant’s impairment that are in focus. A case of early renewal is typically brought about by some change in the entitled individual’s physical or psychological status. Traffic safety and medical considerations thus tend to conflate. The granting of adaptation allowance is not subject to any time limits but is entirely needs-based. In practice therefore the issue often becomes one of balancing the advantages of buying a new car against adapting the old one.\textsuperscript{770} If basic or purchase allowances are granted earlier than the nine-year limit for traffic safety or for medical considerations, the sum of the previously granted allowance is deducted from the newly granted allowance. The deduction itself, however, decreases by one ninth of the total sum every year; thus creating an incentive for the eligible individual to wait as long as possible to renew an application within the nine-year period. If however basic or purchase allowances are granted earlier than after nine years because the vehicle has traveled more than 180 000 km, no deduction is made; see Chapter 52 Section 22 of the Act.

The 180 000 km exception is possibly inspired by a similar 150 000 km exception in Norway.\textsuperscript{771} Motives behind this particular exception would be to avoid counteracting the ideological objective of helping people with disabilities to exercise freedom of movement in everyday life. The exception is thus a way out of a possible conflict between the ideological motives behind the benefits as such, and the fiscal motives behind having time intervals that are as long as possible between renewals of benefits.

Chapter 52 Section 5 of the Act stipulates that car allowance is provided within the scope of allocated funds. This is no mere precautionary statement. For several years, from 1997 to 2004, the annual budgetary funding for car allowance did not in fact meet the fiscal demands from applications by eligible individuals. As a practical consequence those who were eligible and who were granted car allowance had to wait for the next fiscal year before actually receiving the benefit and realizing their legal right. During that period the situation deteriorated. At its nadir in 2004 the payment of cash benefits already ceased in June. From 2005 onwards political decisions have again shown the intent to fully fund the benefit.\textsuperscript{772} Yet, in light of the normative statement in Chapter 52 Section 5, and that a significant underfunding of the benefit was allowed to continue for a very long time, the individual legal right

\textsuperscript{771} SOU 2005:26, p 218 f and 270.
to car allowance must be considered exceedingly weak when faced with political funding decisions.

9.4 Who Is Obliged to Provide Car Allowance?

The Agency’s obligation to provide basic and purchase allowances is relatively straightforward. The national government stated in 1988 that basic allowance shall be handed over in connection with the purchase of the car. The Guidelines puts this down to the point in time when a cost is incurred and lists a number of conditions for payment of the cash benefit to the entitled person:

- There is a decision to grant car allowance
- There is a decision on the amount of the benefits
- The entitled individual must have bought a vehicle
- The vehicle must not have been purchased before the decision to grant car allowance was made
- The granted benefits must be used within six months
- The sum of the basic and purchase allowances together must not exceed the cost of purchasing the vehicle
- If the entitled person has been granted car allowance previously, the criteria for renewed benefits must be met

A basic principle in car allowance is that the private individual chooses, buys and owns the vehicle. It is up to the entitled person to choose between purchasing a new or a used car. Only one car allowance can be granted for one vehicle, regardless of whether more than one eligible person will be using it. In any case basic and purchase allowances are cash benefits from the national government to the entitled individual. The private individual is solely responsible for the purchase contract with the seller. Even though the Agency contributes financially to the private individual’s costs this does not make the

---

775 Case FÖD 1992:17.
Agency or the national government a party to the purchase contract.\textsuperscript{776} The time of purchase is considered to be the point when a written contract between the entitled individual and the seller of the vehicle is drawn up.\textsuperscript{777} Regarding the condition that granted benefits must be used within six months, which follows from Chapter 107 Section 15 of the Act, it is sufficient to show that a contract between the entitled person and a seller exists.\textsuperscript{778}

The Agency’s obligation to provide adaptation allowance and, to a certain extent, driving instruction allowance is somewhat more complex. Around 50\% of those who receive entitlements to car allowance also need adaptation allowance.\textsuperscript{779} Adaptation allowance is granted for alterations and adaptations, that is, for purposes 2 and/or 3 or 5, as a reimbursement benefit for the actual costs. Chapter 52 Section 19 of the Act stipulates that the costs covered are for such alterations and adaptations as are needed for the entitled individual to be able to use the vehicle. This is to be interpreted broadly and may even include some driving instruction if the adjustments are so extensive that the entitled individual needs specific training to be able to drive the vehicle.\textsuperscript{780} However, Section 19 also stipulates that the Agency may decide not to grant adaptation allowance if the vehicle that the entitled individual has chosen is obviously unsuitable with respect to the adjustment that is needed. The same applies if the vehicle is unsuitable with respect to age and condition.

When evaluating the need for adaptation and adjustments the Agency is to consult experts from the Swedish Transport Administration, unless this is obviously unnecessary.\textsuperscript{781} It is, however, the private individual who chooses the vehicle and the adaptations. The Agency pays the full costs of adapting the vehicle and holds the power of veto over deeming the vehicle suitable. Nevertheless, the Agency is not party to the adaptation contract; thus, no public procurement takes place, and the whole procedure becomes one of quotations and reviews. In short, once the private individual decides on an adaptation and gets a quotation, the Agency reviews it, consulting the Swedish Transport Administration and any other expertise deemed necessary, for example an occupational therapist, before deciding whether to grant the application for adaptation allowance.\textsuperscript{782} The private individual may also seek

\textsuperscript{776} Case T 1459-05 Göta Court of Appeal.
\textsuperscript{779} SOU 2005:26, p 138.
the advice of the Swedish Transport Administration, both concerning the kind of car to buy in the specific situation and what adjustments to apply for.\textsuperscript{783}

Questions to guide the decision process about what alterations and adaptations are needed in order for the entitled individual to use the vehicle are described in the Guidelines:\textsuperscript{784}

- What needs must be met if the entitled person is to use the vehicle?
- What alterations or adaptations are needed to meet these needs?
- What amount of cash benefit should the Agency grant?

The notion of using the vehicle is to be construed broadly and encompasses all kinds of alterations, adaptations, adjustments and equipment that may be needed. From case law it follows that adaptation allowance may also be granted for equipment that is not specifically for disability accessibility, if the entitled individual needs the equipment to use the vehicle.\textsuperscript{785} Any alteration or equipment must, however, be part of the vehicle itself, trailers for example are not covered.\textsuperscript{786} The primary focus for adaptation allowance should be equipment and adjustments that are more or less specially designed to overcome various impairments, for example hand controls for accelerators and brakes and various wheelchair adjustments. Adaptation allowance is typically not to be granted for equipment that is standard in cars in the price range the entitled person purchases, such as central locking, electrically operated windows etc.\textsuperscript{787} What adaptation allowance actually covers at any given time is therefore dependent on the needs of the entitled individual and the technical standard in modern private cars on the market.

\section*{9.5 Legal Guarantees for Entitlement to Car Allowance}

The private individual whose application for car allowance is refused by the Agency has a right to appeal the decision to the administrative courts under Chapter 113 Section 10 of the Act. The right to appeal pertains to all parts of a decision regarding car allowance. For example, if basic and purchase

\footnotesize{\textsuperscript{783} Vägverket 2008. 
\textsuperscript{785} See for example Case 4069-02 Administrative Court of Appeal in Stockholm. 
\textsuperscript{786} Case FÖD 1993:9. 
\textsuperscript{787} See for example Case RÅ 2000 ref 24 and Case RÅ 2002 not 211.}
allowances are granted but adaptation allowance is refused, that part of the
decision concerning adaptation may be appealed while the rest of the decision
stands. In this particular respect the private individual’s legal right to car
allowance is strong. To further appeal a final verdict of the administrative
court of first instance, leave to appeal is needed from the Administrative Court
of Appeal, see Chapter 113 Section 16 of the Act. Such leave to appeal is also
necessary for the Agency, should the Agency want to appeal a final verdict
overturning its decision.
10 Car Allowance and Vehicles as Technical Assistive Devices and Durable Consumer Goods as Social Rights in Denmark

Both car allowance and vehicles as technical assistive devices and durable consumer goods are benefits which are directed from the municipality to the individual. These benefits are governed by the Social Services Act. During an editing and consolidating process in 2005 the former Section 99 of the Social Services Act was renumbered 114. The material scope remained virtually unchanged, but the municipalities were given full responsibilities for all transport-related benefits under the Act. In 2010 and 2012 respectively Section 114 was edited and amended. The adjustments in 2010 were, according to the government, primarily editorial or technical in character and no changes in eligibility were intended. However, the government explicitly stated that a prime objective of the editing process was to clarify eligibility in order to reduce the number of applications by people who did not comply with the eligibility criteria. The change that came into force in 2012 expanded the eligibility criteria somewhat to improve the possibilities for parents of children placed outside the parents’ home to receive car allowance.

10.1 Car Allowance – a Rights/Duties Relation?

Section 3 of the Social Services Act determines that the municipalities are responsible for all decisions concerning benefits and services to private individuals under the Act. The national government has issued Executive Regulation nr 719 and the General Guidelines directed to the municipalities regarding the management and administration of car allowance. Due to their comprehensive nature, together with the fact that they are used by those in the municipalities who make the actual decisions to grant or refuse applications, the General Guidelines may be seen as an important

---

788 Bekendtgørelse af lov nr 150 af 16/02/2015 om social service.
789 Lov nr 573 af 24/06/2005 om social service.
790 Lov nr 549 af 26/05/2010 om ændring af lov om social service.
791 LFF 2010-03-17 nr 168, Almindelige bemærkninger, 1. Indledning.
792 Lov nr 468 af 18/05/2011 om ændring af lov om social service.
793 Bekendtgørelse nr 719 af 19/06/2013 om støtte til køb af bil efter serviceloven.
794 General Guidelines nr 7 of 15/02/2011 (Vejledning nr 6 til Serviceloven).
source of knowledge on car allowance law. The General Guidelines also set out the normative ideological purposes behind car allowance:

- To provide for the transport needs of those citizens who, due to a lasting reduction in functional capacity, cannot, or only with great difficulty, function in everyday life without the use of a car

- Based in the individual’s actual situation to contribute to the private individual’s ability to adapt to such an independent and active way of life as is possible for others without a handicap and of the same age and under the same circumstances in life

- To contribute to the ability of citizens with a lasting reduction in physical or psychological functional capacity to gain or maintain a connection to the labor market, and substantially provide for themselves

- To contribute to the ability of citizens with a lasting reduction in physical or psychological functional capacity to complete an education aimed at future employment and income earning

- To contribute to citizens with no connection to the labor market, and not completing an education, to be able to sustain activities outside of the residence to such extent as to require a considerable need for transportation by car

Under Section 2 of the Social Services Act, car allowance is considered a residence-based social security benefit, available to anyone who is legally resident in Denmark and otherwise meets the legal criteria for car allowance. Section 4 establishes a distinct obligation on the part of the municipalities to take responsibility for all necessary provisions under the Act. Under Section 114 of the Act the municipalities must grant car allowances to those with a lasting reduction in physical or psychological functional capacity that to a considerable degree:

1. complicates their possibility of gaining or maintaining employment unless they have the use of a car, or

2. complicates their possibility of completing an education without the use of a car, or

3. reduces their capacity to travel, in those cases where the person has activities outside the residence, which involve a considerable need for a car.

---

795 General Guidelines nr 7 of 15/02/2011, 134.
Car allowance comes in five forms:

- Car purchase allowance
- Supplemental loan
- Benefits for driving instruction
- Benefits for necessary adaptations to a car
- Exemption from fees and taxes

Car purchase allowance comes in the form of an interest-free loan from the municipality to the entitled person. Section 114 of the Act sets the maximum amount that can be granted (DKK 160,000 plus VAT).

Under Section 7 of Executive Regulation nr 719 the extent of the loan is based on the price of the cheapest suitable car. However, in cases where there are particular circumstances arising from reduced functional capacity, a supplemental loan, which is interest- and amortization-free, can be granted to cover the difference between the maximum amount and the actual cost of purchase.

The municipalities are obliged in certain cases to grant benefits for driving instruction and for necessary adaptations to a car under Section 114 of the Act and Sections 13 and 14 of Executive Regulation nr 719. In these forms car allowance is either a standardized cash benefit or a reimbursement covering the actual cost of adaptation, installation or education. Thus, these two forms of car allowance do not come as a loan. Car allowance can only be granted for the purchasing of a car and for costs directly related to this. If the operation of a car is particularly expensive, for example if the car is very large and therefore needs more fuel than an average car, any economic support to the private individual to cover the costs of operation will have to be granted under other rules. The exemption from fees and taxes under Section 114 of the Act and Section 10 of Executive Regulation nr 719 is an obligation on the part of the municipalities to make a decision to exempt a person from certain fees or taxes when that person is found eligible for car purchase allowance.

The municipalities’ obligations under the Act are unconditional with regards to people who meet the eligibility criteria and when any corresponding benefits cannot be granted under any other legislation, see Section 115. There are no specific age limits for eligibility. Regarding children, the parents may apply on behalf of the child and the child will be granted benefits insofar as

---

796 Under Section 7 of Executive Regulation nr 719 the sum is DKK 171,000 including VAT.
the eligibility criteria are met. From the normative statements in the Social Services Act and Executive Regulation nr 719 it is clear that the duty for the municipalities to provide benefits is strong enough for the car allowance to emerge, indirectly, as a corresponding legal right of the private individual. The national government is granted wide latitude under Section 114 in setting forth specific criteria for eligibility, conditions for repayment, in regulating benefits for necessary adaptations to a car and benefits for driving instruction, etc. The private individual’s legal right to car allowance also comes with several duties on the part of the entitled person. Section 15 of Executive Regulation nr 719 lists, as prerequisites for car purchase allowance and supplemental loan the following nine duties:

1. Car purchase allowance and supplemental loan may only be used for purchasing a new car, or a car that has been bought new during the last year, or, if car allowance has already been granted, a car that is less than two years old, if that car is in sound condition and can be expected to be kept in sound condition for six more years

2. The car shall be registered in the name of the entitled person

3. The Central Registry for Motor Vehicles registration of the car must include a clause stating that a change of owner/user within six years of registration can only occur with permission from the municipal council

4. The car is to have comprehensive insurance to its full value including any necessary adaptations the car has been provided with by benefits for necessary adaptations to a car

5. The health eligibility criteria and any work or educational eligibility criteria for car purchase allowance must continue to be met

6. The car shall to the greatest possible extent be used to meet the entitled person’s total need for transport

7. The car must not be transferred, rented or lent for any longer period of time

8. The car must not be used as collateral or any other form of security for debt not connected with the car

9. The repayment plan must be honored

Note that number 4 above also pertains to benefits for necessary adaptations to a car. Four individual duties on the part of the applicant for exemption from fees and taxes are listed in Section 16, the last three being identical with 5-7 above:
1. The car must be registered in the name of the applicant
2. The health eligibility criteria and any work or educational eligibility criteria for car allowance must continue to be met
3. The car shall to the greatest possible extent be used to meet the entitled person’s total need for transport
4. The car must not be transferred, rented or lent for any longer period of time

As we shall see below, and as a result largely from these and other individual duties, the ownership relations regarding the car bought with the support of car allowance can be somewhat complex.

10.1.1 Car Purchase Allowance – a Rights/Duties Relation?

As long as people continue to rely on car allowance, they may not exercise to the full extent the rights that are typically associated with an understanding of the rights of ownership. For example, as noted above, the car may not be independently sold, rented, lent or used as security for debts. Further, the limitations on full ownership rights do not cease to exist simply because the loan has been fully repaid and/or written off. The public interest in the car, so to speak, continues to be a factor that influences ownership until the vehicle is sold or scrapped.

When car purchase allowance is granted, the municipality draws up an instrument of debt, to be signed by the applicant. The instrument must state the details of the loan and show that the applicant has arranged for the car to be covered by comprehensive insurance. The General Guidelines mention that the instrument of debt should also show that the car may not be taken out of Denmark in violation of the rules under Executive Regulation nr 1296. According to Executive Regulation nr 1296 staying abroad for a period longer than one month at a time may lead to all benefits under the Social Services Act, including car allowance, being revoked. The entitled person can, however, apply to the municipality, which has wide discretion under Executive Regulation nr 1296 to grant exceptions to the one-month limit, for approval of longer stays abroad. The entitled individual is thus not automatically free to take the car anywhere for as long as they might wish, but is limited to what

797 Bekendtgørelse nr 1296 af 15/12/2009 om ydelser efter lov om social service under midlertidige ophold i udlandet.
798 General Guidelines nr 7 of 15/02/2011, 233.
the municipal authorities will approve regarding time and place in the individual case.

Under Section 7 of Executive Regulation nr 719 car purchase allowance is granted to eligible persons up to a sum that corresponds to the cost of the cheapest car that is appropriate in relation to the applicant’s need. There is, however, no requirement that the applicant actually buys the cheapest car. If the applicant can finance the difference between the cost of the cheapest appropriate car and a more expensive car, the applicant may use the loan to fund a part of the purchase of the latter. The car may also be purchased abroad, if the applicant so desires.799 In any case, a car bought with car purchase allowance must still be appropriate in relation to the applicant’s needs.800 The evaluation concerning which car is the cheapest in relation to the applicant’s needs takes into consideration only the specific needs of the individual applicant, that is, no social circumstances form part of that evaluation. For example, in a case where a married woman with two children applied for car purchase allowance for a large model car, the cheapest car found appropriate in relation to the applicant’s need was a smaller model that did not have room for her personal assistants and her family. The primary objective of the evaluation was to decide which car would meet the applicant’s individual need for transport in everyday life. That the personal assistants, the spouse and the children did not all fit in to the smaller model was not considered to be important. The National Social Appeals Board stated explicitly that if the family wanted a bigger model to serve the family’s actual need for transport they could finance the difference themselves.801

There is no means-testing for car purchase allowance. The economic circumstances of the applicant are however a consideration when determining the amount of the loan that will have to be repaid and written off, respectively. When parents apply for car purchase allowance on behalf of a child, it is the child’s income that is considered, and not that of the parents.802 Section 8 of Executive Regulation nr 719 establishes a cut-off point. In 2014 the sum was DKK 204 000. For entitled persons whose annual income is below or at the cut-off point, one half of the interest-free loan is to be repaid by monthly installments of 1/72 of the amount. The other half of the loan is written off at the rate of 1/72 per month. For entitled persons whose annual income is above the cut-off point the part of the loan to be repaid by monthly installments is increased by 20% of the difference between the income and the cut-off point.

799 Case 129-10 National Social Appeals Board.
800 General Guidelines nr 7 of 15/02/2011, 174.
801 Case C-36-06 National Social Appeals Board.
802 General Guidelines nr 7 of 15/02/2011, 190.
The part of the loan to be written off is then reduced by the same amount. For entitled persons enrolled in education and whose annual income from work, or any income comparable to income from work, is not greater than 48/72 of the sum of the loan issued as car purchase allowance, the repayment in monthly installments can be suspended for as long as the education lasts. At the end of the education the accumulated sum, corresponding to the unpaid installments, is written off. Section 22 of Executive Regulation nr 719 regulates when changes in the applicant’s income, after the time of application but before the car is purchased, are to be considered large enough to require a recalculation based on the changed income. The latitude given is that when an increase in income is larger than 20%, or a reduction in income is larger than 5%, the loan should be recalculated. In any case, if there are no special circumstances, a decision to grant car allowance is only valid for six months. If the benefit is not used during this time the applicant will typically have to supply a new application.

When an applicant has received car purchase allowance earlier, and reappears to get a loan to buy a new car, the public interest in the old car becomes evident as the municipality will take into account the proceeds from the sale of the old car before granting car purchase allowance and any supplemental loan for a new car. Section 12 of Executive Regulation nr 719 stipulates that the net proceeds from the sale of the old car shall be subtracted from the new loan. When calculating the new loan, the sales proceeds are first used to reduce the part of the loan that is to be repaid. If the sum of the proceeds is greater than the repayable part of the new loan, the part to be written off is then reduced to the amount of the rest of the proceeds. The applicant thus has some incentive to sell the old car at the highest price possible. However, if the loan cannot be fully repaid with the proceeds from the sale, the remaining debt is written off. If the applicant has earlier received, and/or is now eligible to receive a supplemental loan, the net proceeds from the sale of the old car will first be used to reduce that loan, and only then will any remaining proceeds be used to reduce the loan as described above.

If the entitled person has financed a more expensive car than the loan alone would allow for, the proceeds will be divided between the person and the municipality in proportion to their respective investments. This is also true for any extra purchases that have been made, for example in the form of accessories or installations. The public interest in the car apparently ceases should a person want to sell the car but not apply for renewal of car purchase

---

803 For incomes comparable to incomes from work, see for example Section 8 of Executive Regulation 719 and Case C-47-06 National Social Appeals Board.
804 General Guidelines nr 7 of 15/02/2011, 203.
allowance. In this case, or where the entitled person dies, the proceeds can be kept by the person or the estate, as long as any remaining debt to the municipality is first cleared.

10.1.2 Exemption from Fees and Taxes – a Rights/Duties Relation?

Another aspect of the public interest in the car is that certain duties otherwise connected with the full ownership of a car are not applicable to the entitled individual. When an applicant has been granted car purchase allowance, under Section 10 of Executive Regulation nr 719 the municipality shall decide to exempt the applicant from certain fees and taxes that an ordinary registered owner of a car normally pays. Under Section 16 of the Vehicle Excise Duty Act persons with a lasting reduction in the functional capacity who are eligible for car purchase allowance are exempt from vehicle excise duty and from additional private vehicle excise duty under the Act. Under Section 7 of the Fuel Tax Act persons with a lasting reduction in the functional capacity who are eligible for car purchase allowance are fully exempt from fuel tax if the car is fueled with gasoline. If the car is fueled with diesel the car is still exempt from fuel tax but not from countervailing fees under Section 3 of that Act. Under Sections 2 and 5a of the Registration Tax Act a vehicle that is to transport more than nine or more persons including the driver, that is, a bus, a van or a minibus, which is typically fitted with nine or more seats, and which is exempt from vehicle excise duty under the Vehicle Excise Duty Act or eligible for exemption under Section 7 of the Fuel Tax Act, and with or without a reduced number of seats is used by or for people in wheelchairs, is exempt from registration tax.

10.2 Vehicles as Technical Assistive Devices and Durable Consumer Goods – a Rights/Duties Relation?

Under Sections 112 and 113 of the Social Services Act the municipality must grant technical assistive devices and durable consumer goods to persons who meet the eligibility criteria. In the manner typical of framework law, the
national government is granted wide latitude under Sections 112 and 113 of the Act in setting out specific criteria for eligibility, fees for purchase, repairs etc, specific regulations concerning issuing and reissuing devices and what objects are to be listed as available under benefits as technical assistive devices and durable consumer goods respectively. These regulations are established in Executive Regulation nr 1432. Sections 2 and 3 of Executive Regulation nr 1432 state that benefits are granted for the cheapest and most appropriate object and that benefits may be issued either in kind or as a cash benefit reimbursing the applicant for costs. If the benefit is issued in kind, the municipality may choose to issue the object as a loan, with a corresponding duty on the part of the entitled person to return the object if it is no longer needed, see Section 7 of Executive Regulation nr 1432. Benefits are typically not granted for objects purchased by an applicant before the decision to grant benefits is final.

Insofar as benefits cannot be granted under any other legislation, see Section 115 of the Act, the municipalities are obliged under the Act to provide support to persons who meet the eligibility criteria. There is no age or any other general limit on eligibility. However, whether a vehicle should be considered as an assistive device or consumer good is decided entirely in each individual case based on the specific circumstances. Thus no unconditional obligation on the part of the municipality exists. From the normative statements in the Social Services Act and Executive Regulation nr 1432 it is clear that there is a framework duty for the municipalities to provide benefits. The legal right to technical assistive devices and durable consumer goods for the private individual that indirectly emerges from the municipal obligation is viable enough to be considered an entitled person’s legal right.

Ownership of a vehicle granted as a technical assistive device typically rests with the municipality. As such the entitled individual does not have the right of disposition normally associated with ownership, that is, the person cannot sell the vehicle or use it as security etc. Ownership of a vehicle granted as a durable consumer good, however, rests with the entitled individual, who may exercise any right of disposition over the vehicle. Full ownership rights also appear to rest with the individual when a vehicle is granted under Section 113 of the Act as a durable consumer good to function exclusively as an assistive device, in which case the municipality will fully fund the vehicle, just as it would fully fund a technical assistive device granted under Section 112.

---

808 Bekendtgørelse nr 1432 af 23/12/2012 om hjælp til anskaffelse af hjælpemidler og forbrugsgoder efter serviceloven.
809 LFF 2010-01-27 nr 114, Almindelige bemærkninger 3.1 Frit valg af hjælpemidler.
Specific duties on the part of the private individual are not regulated in the Social Services Act or Executive Regulation nr 1432. Liability insurance for mopeds and scooters is, however, required under Sections 101 to 105 of the Traffic Act⁸¹⁰ and the General Guidelines state that the entitled person must have valid liability insurance as a necessary prerequisite for being granted a three-wheeled scooter.⁸¹¹ Comprehensive insurance is not required.

### 10.3 Who Is Eligible for Car Allowance?

Section 114 of the Act states that car purchase allowance can be granted to persons with a lasting reduction in the physical or psychological functional capacity. To help determine whether a person’s reduction in the functional capacity is sufficiently lasting, the government has set up two criteria in Section 1 of Executive Regulation nr 719:

- that no prospects of improving the health conditions exist for the foreseeable future, and
- that long into the future a need for ameliorating the consequences of the reduced functional capacity will exist

Thus, even a severe reduction in the physical or psychological functional capacity may not meet the eligibility threshold if, for example, a diagnosis is recent and the medical prognosis is unclear, or if there is hope that medical treatment or rehabilitation may, over time, improve functional capacity.⁸¹²

The determination of whether a reduction in physical or psychological functional capacity in a child is sufficiently lasting, may encounter specific problems regarding medical evaluations. For example, doctors may hesitate to declare the child’s impairment lasting, and there may also be significant problems in making an accurate long-term medical prognosis. The General Guidelines suggest that the evaluation be as comprehensive as possible and advise comparisons to be made with the situation for children in general of the same age and circumstances. The General Guidelines also advise taking into account whether the child has a progressive disease as a special

---

⁸¹⁰ Bekendtgørelse nr 1320 af 28/11/2010 af færdselsloven.
⁸¹¹ General Guidelines nr 7 of 15/02/2011, 31 and 104.
⁸¹² Case O-121-95 National Social Appeals Board.
circumstance regarding both the lasting character of the impairment and also the need for transport.813

If the reduction in functional capacity is found to be lasting, Section 2 of Executive Regulation nr 719 requires a comprehensive evaluation of the applicant’s health, social circumstances and lack of capacity to move about. Regarding the applicant’s health and lack of capacity to move about, Section 2 puts emphasis on objective medical findings, medical opinions, information on development and deterioration of the impairment in the foreseeable future, the applicant’s capacity to move about, including the distance that can be walked and any impaired mobility, and also if there is some special need for safeguarding requirements when traveling. It is not the extent or nature of the impairment per se that is of importance, but rather the extent to which the impairment stops the applicant from using general public transport or any other means of transportation than driving a car.814

The criterion regarding lack of capacity to move about appears to be closely tied to the applicant’s ability to walk.815 The General Guidelines state in fact that the ability to walk must be considerably impaired before car purchase allowance can be granted, and that this is especially the case when the applicant is not working or enrolled in education. A test indicating the possible walking distance is not in itself, however, sufficient for an evaluation. The ability to walk includes such elements as balance, length of steps, ability to turn, need to take pauses while walking, ability to sit down and stand up, ability to carry something while walking and ability to walk up or down stairs. Any person’s ability to walk may vary from day to day and the ability to walk may also be influenced by technical assistive devices, the weather and other external factors.816 In a case where a person could walk more than 100 meters, climb stairs and with some difficulties use general public transport, the ability to walk was deemed not to be considerably impaired.817 In another case a person could walk some 200 meters with elbow crutches and several pauses and was not able to use general public transport. However, the ability to walk was deemed not to be considerably impaired and the capacity to move about was thus not considered sufficiently lacking to qualify the granting of car purchase allowance.818

813 General Guidelines nr 7 of 15/02/2011, 147.
814 General Guidelines nr 7 of 15/02/2011, 144 and 145.
815 Cases C-37-00 and O-2-00 National Social Appeals Board. See also Ankestyrelsen 2010, p 11 f.
816 General Guidelines nr 7 of 15/02/2011, 150 and 151.
817 Case 59-10 National Social Appeals Board.
818 Case 98-10 National Social Appeals Board.
Even if the ability to walk is not impaired enough to qualify for car purchase allowance on that basis alone, the benefit can still be granted if there is also some special need for safeguarding requirements when traveling. Examples include situations where the applicant may walk a certain distance and/or use general public transport, but where this would cause either deterioration in the medical condition or such fatigue so as to make it impractical. Several medical diagnoses and conditions may actualize special need for safeguarding requirements when traveling; examples include various heart and lung diseases, polio and Parkinson’s disease.\textsuperscript{819} Applicants may also have special reasons for going by private car instead of general public transport. For example some applicants with certain medical diagnoses and conditions may need to go by private car for reasons of personal integrity and others may also have to travel with cumbersome medical equipment.\textsuperscript{820}

\begin{quote}
10.3.1 Social Circumstances
\end{quote}

Regarding social circumstances, Section 2 of Executive Regulation nr 719 puts special emphasis on the applicant’s comprehensive situation, including details of the applicant’s domestic, work-related and educational circumstances that are of importance for functional capacity and the need for transport in everyday life. When evaluating the need for transport, Section 2 emphasizes that the need is so extensive that benefits for the purchase of a car will compensate considerably for the reduction in the applicant’s functional capacity. The applicant must have activities outside the home which require a great need to travel by car. The level of activities shall be measured against the usual level of activities for a person of the same age without a disability and with a generally corresponding situation in life. Under Section 4 the special need for a car because of safeguarding requirements when traveling for reasons of health shall also be considered in relation to social circumstances. However, if the comprehensive need for transport in everyday life, as evaluated based on the applicant’s age, general condition and other circumstances, can be appropriately met by other benefits or services, including individual transport services for people with severe mobility impairments, car purchase allowance shall not be granted. If, for example, the applicant can manage the need for transport in everyday life by a combination of walking, albeit only short distances and with difficulty, using an electric scooter and with some difficulty using general public transport, the benefit

\textsuperscript{819} General Guidelines nr 7 of 15/02/2011, 152.
\textsuperscript{820} General Guidelines nr 7 of 15/02/2011, 169.
can be denied on the ground that the comprehensive need for transport is met by other means and services.\textsuperscript{821}

The General Guidelines note that the comprehensive evaluation of the social circumstances shall be based mainly on information from the applicant regarding family, residence, education, work, voluntary work including work in organizations, economy, leisure activities, the need for transport, available general public transport and the distance to these and the availability of other transport services. The comprehensive evaluation is to include a view of future development of the social circumstances so as to ensure that the benefit will be optimized for a long period of time. The size, composition and resources of the family, if any, might have an impact on the applicant’s functional capacity and the need for transport in everyday life. Examples include whether a spouse or cohabiting partner is available to assist the applicant, or if the family have children and whether any other family member is disabled. Other examples include cases where another family member, typically a spouse or cohabiting partner, will drive the car and that family member’s working hours are important in deciding whether a car may meet the applicant’s comprehensive need for transport in everyday life and whether the driver can also assist the applicant with getting in and out of the car etc.\textsuperscript{822}

The place of residence and the distance to general public transport, shops, work, hospitals and public services etc, constitute parts of the social circumstances.\textsuperscript{823} However, a long distance from home to general public transport, or to any other facilities, is not alone a reason for granting car purchase allowance, but is one factor among many to be included in the comprehensive evaluation.\textsuperscript{824} In a case where the need for transport was estimated as between 10 000 and 15 000 km per year, and where using general public transport was out of the question, car purchase allowance was granted on the ground that the need could not be appropriately met by individual transport services for people with severe mobility impairments.\textsuperscript{825} In a case where the need for transport was estimated as 3 000 km per year however, car purchase allowance was denied on the ground that the need could be appropriately met by other services, including individual transport services for people with severe mobility impairments.\textsuperscript{826} The fact that an applicant has

\textsuperscript{821} Cases 59-10 and 98-10 National Social Appeals Board.
\textsuperscript{822} General Guidelines nr 7 of 15/02/2011, 163 and 164.
\textsuperscript{823} General Guidelines nr 7 of 15/02/2011, 165.
\textsuperscript{824} Case C-39-07 National Social Appeals Board.
\textsuperscript{825} Case C-2-05 National Social Appeals Board.
\textsuperscript{826} Case C-8-05 National Social Appeals Board.
been granted car purchase allowance previously is not a qualification; the eligibility criteria must be fulfilled at the time of application.\textsuperscript{827}

There is no age limit per se in either direction for eligibility, and very high age is not therefore a ground for refusing car allowance. However, the requirement that compensation for the functional capacity and the need for transport in everyday life together with the level of activities must be measured against a specific normality, namely that of the usual level of activities for a person of the same age without a disability and with a generally corresponding situation of life, makes it increasingly difficult for elderly applicants to qualify for car allowance, as the perceived normality of ageing progresses towards frail health and a reduced activity level.\textsuperscript{828}

The same process – measuring the need for transport against a perceived normality of a certain age – can also make it difficult for small children to qualify. Car purchase allowance will typically not be granted to children who cannot stand or walk due to low age alone, or who can still be pushed in a stroller. The General Guidelines explicitly state that any parent with a child up to around three years of age needs to transport the child, and as a rule car purchase allowance may be granted to disabled children only after three years of age, at the earliest. However, the exception to this rule are cases where there are considerably more difficulties in transporting the child compared to other children of the same age.\textsuperscript{829} The comprehensive evaluation of the social circumstances regarding children must include examining whether the child is anxious or difficult to take on general public transport, for example, because the child is very noisy or lashes out at fellow passengers etc. A child can thus have a need for a car without necessarily having a reduced ability to walk.\textsuperscript{830} A 14-year-old boy was granted car purchase allowance based on his considerably reduced psychological functional capacity and low motor skills, together with the fact that he was tall, strong and offensively assertive toward other passengers.\textsuperscript{831}

Under Section 2 of Executive Regulation nr 719 a special eligibility requirement for all forms of car allowance is that the benefit must to a considerable degree make the applicant more resourceful, or empowered, in daily life. If the applicant cannot drive the car, special importance is given to whether the applicant has access to someone who can act as a driver. Such a

\textsuperscript{827} Cases C-37-00 and C-39-07 National Social Appeals Board.
\textsuperscript{828} See General Guidelines nr 7 of 15/02/2011, 166.
\textsuperscript{829} General Guidelines nr 7 of 15/02/2011, 167.
\textsuperscript{830} General Guidelines nr 7 of 15/02/2011, 168.
\textsuperscript{831} Case C-47-02 National Social Appeals Board.
driver can, for example, be a spouse, a cohabiting partner, etc; the important aspect is that the driver must be available to such extent that the need for transport in everyday life can be met by the car and its driver. Making the applicant more resourceful is, however, not a stand-alone criterion for granting car allowance but is rather a necessary requirement that has to be confirmed by the comprehensive evaluation. There was a case of a man who was severely disabled and was granted a loan to purchase a car to be driven by another person, but was refused benefits for necessary adaptation and driving instruction needed to make it possible to drive the car himself. The ground for refusal was that the extent and the costs for adapting the car for him to drive it, and for driving instruction, were out of reasonable proportion when compared to the gain in personal resourcefulness.\textsuperscript{832}

\textbf{10.3.2 Three Categories of Need for Transport in Everyday Life}

To qualify for car purchase allowance, the applicant’s need for transport in everyday life that cannot be met by other means or services must fall under at least one of the three categories of eligibility specified in Section 3 of Executive Regulation nr 719:

1. To and from work, from which the applicant derives a considerable contribution to provision for the applicant and for any family

2. To and from education which based on a general adapted curriculum or plan, is aimed at future employment and income possibilities

3. To a considerable degree may ameliorate the consequences of the applicant’s reduced functional capacity

From Section 4 of Executive Regulation nr 719 it follows that children under 18 years of age can be eligible for car purchase allowance, and that eligibility is not dependent on whether the child lives with the parents or at some service facility provided by the municipality under Section 52 of the Social Services Act, as long as the child meets the general eligibility criteria and there is a need for transport in connection with being with others, holidays etc.

For the first category of eligible people the car must be necessary in relation to journeys to and from a workplace. Whether a car is needed or not in the actual work or business is not an important factor in the evaluation. In a case

\textsuperscript{832} Case C-2-07 National Social Appeals Board.
where the disabled applicant worked as a salesman, car purchase allowance was not granted in the first category on the ground that any person, with or without disabilities, would need a car for the job.\textsuperscript{833} The very same conclusion was reached in another case where the applicant worked as a freelance journalist.\textsuperscript{834} In both cases it was the specific nature of the work rather than the lasting reduction in functional capacity that made a car necessary.

Not all pursuits a person is paid for are necessarily considered to be work. Civic tasks and duties for example, such as serving as an elected politician on a board or a council, or serving as the chair or member of an organization’s board, appear to be excluded from the definition of work and car purchase allowance cannot be granted to cover the need for transport to and from such meetings, apparently regardless of the income earned by them.\textsuperscript{835}

Section 3 of Executive Regulation nr 719 specifies that when evaluating whether an applicant meets the second part of the eligibility criteria of the first category – receiving a considerable contribution to income from work – the important factors are duration and character of the employment, the number of working hours and the distribution of the working hours over the week. Incomes below DKK 25 000 a year are typically never considered to be a considerable contribution to the provision. If the applicant has a pension from the Danish social insurance system the extra income from the work should be at least ¼ of the social pension income in order to qualify as a considerable contribution to the provision.\textsuperscript{836} The ¼ principle has however been modified in a case where the applicant also had a substantial private pension supplementing his total income. In this case a sum that had a lower ratio to the total income was still accepted as a considerable contribution to the provision. It was also noted as a factor in the decision that attachment to the labor market is of increasing importance in current social policy.\textsuperscript{837}

For the second category of eligible people the car must be necessary in relation to journeys connected with pursuing an education aimed at future employment. The applicant may either be enrolled in an ongoing course, or about to start an education. The education may either be directly aimed at future employment possibilities, such as vocational education, or be a basic education leading to higher education aimed at future employment possibilities. Car purchase allowance can thus also be granted in cases where

\[833\] Case C-32-02 National Social Appeals Board.
\[834\] Case 45-11 National Social Appeals Board.
\[835\] See Case C-9-02 National Social Appeals Board and General Guidelines nr 7 of 15/02/2011, 158.
\[836\] Case O-57-98 National Social Appeals Board.
\[837\] Case C-44-03 National Social Appeals Board.
the work or profession the applicant will strive towards is not already exactly determined. If the primary ground for the application is going to and from an educational facility, and the future need for transport is unclear, the evaluation shall consider whether the need for transport can be appropriately met by other means and benefits. This must also be considered in those instances where the educational facility provides transportation for enrolled students. The evaluation will consider the applicant’s comprehensive need for transport, that is, both to and from the educational facility but also every other reasonable need for transport in everyday life. Economy will also be a factor to consider, and when a car is deemed the cheapest transport solution from a comprehensive perspective this is in itself an argument for granting car purchase allowance.\textsuperscript{838}

The third category of eligibility – that a car may ameliorate to a considerable degree the consequences of the applicant’s reduced functional capacity, often referred to in law and policy as the “wellbeing category”\textsuperscript{839} – aims, according to the General Guidelines, at helping the citizen live a life as close to normal as possible. Under this category it is not necessary for the applicant to work or study. The comprehensive evaluation must take into account all the applicant’s activities that impact on their social network and way of life, for example sports, visits to family and friends, participation in voluntary classes, voluntary work in organizations, excursions, visits to a summer house etc. As the comprehensive evaluation, in order to grant benefits, needs to establish that the purchase of a car will help the applicant to a considerable degree in ameliorating the consequences of reduced functional capacity, the applicant’s need for transport will be measured against all available means of transportation, including general public transport, individual transport services for people with severe mobility impairments and any other form of benefit or service the applicant in fact receives, for example cash benefits. Only if a car, despite all other available means of transport, is still considered to ameliorate the consequences of the applicant’s reduced functional capacity to a considerable degree, can car purchase allowance be granted. The eligibility criteria for the wellbeing category are thus significantly stricter than those for the first two categories, and consequently it is more beneficial for the individual applicant to be evaluated under the first two categories of eligibility.\textsuperscript{840} This is very important because the vast majority, in the period from 2005 to 2010 between 77\% and 83\% of all applications every year, are evaluated in the “wellbeing category”.\textsuperscript{841}

\textsuperscript{838} General Guidelines nr 7 of 15/02/2011, 159 and 160.
\textsuperscript{839} “Trivselsmæssigt grundlag” in Danish.
\textsuperscript{840} General Guidelines nr 7 of 15/02/2011, 155 and 161.
\textsuperscript{841} Ankestyrelsen 2010, p 7 f.
The relative strictness of the “wellbeing category” is evident from the perspective of people with disabilities living, either permanently or for some periods, in nursing homes, residential facilities and other forms of institutions. The General Guidelines state that a need for transport in connection with a few visits home every year and the occasional holiday, does not constitute a sufficient need for transport. Rather, the need has to be based in a number of activities that require travel, and that these transport needs cannot be met either by the residential facility or by other means and services.842 In one case a young woman, with a lasting reduction in both physical and psychological functional capacity, moved to a residential institution and was refused car allowance. The grounds for refusal were that her need for transport was to a certain extent covered by the residential institution and her remaining need, primarily at weekends, holidays etc, was not an everyday need, and thus not enough to mean that a car would ameliorate the consequences of her reduced functional capacity in everyday life to a considerable degree.843 In a somewhat similar case a 9-year-old had a lasting reduction in physical functional capacity, and the parents’ application on behalf of their child for car allowance was refused. The grounds for refusal were that the child’s need for transport was to a certain extent covered by the residential institution and the remaining need, primarily at weekends, holidays etc, was not an everyday need, and thus not sufficient to mean that a car would ameliorate the consequences of the child’s reduced functional capacity in everyday life to a considerable degree. The need for transport when the child was at home with the parents was to be covered by other means and services, including individual transport services for people with severe mobility impairments.844

10.3.3 Who Is Eligible for a Supplemental Loan? – Special Circumstances

Section 7 of Executive Regulation nr 719 states that if an applicant meets the eligibility criteria for car purchase allowance the loan is granted, up to the maximum amount, on the basis of the cheapest car available that is appropriate for the applicant’s needs. However, when there are special circumstances a supplemental loan may be granted to cover the difference between the maximum amount and the actual cost of purchase. Section 6 exemplifies special circumstances as:

842 General Guidelines nr 7 of 15/02/2011, 162.
843 Case C-26-06 National Social Appeals Board.
844 Case 58-10 National Social Appeals Board.
- When the impairment makes necessary adaptations that can only, or usually can only, be made to bigger or more expensive cars

- When a bigger or more expensive car is necessary as the impairment makes it impossible, or only possible with considerable difficulty, for the applicant to get in and out of the car

- When a bigger or more expensive car is necessary to accommodate necessary technical assistive devices

It is considered important when evaluating the need for a supplemental loan that the car bought with car allowance should be of use to the applicant for a long period of time, at least for a six-year period. A supplemental loan can thus also be granted in cases where the applicant does not currently need a more expensive car but is expected to need one within the six-year frame.\textsuperscript{845} In case law a 9-year-old was granted supplemental loan on the grounds that a bigger car was necessary to accommodate necessary technical assistive devices and also because the reduction in functional capacity was of a medically progressive nature and could be expected to increase during the six-year period.\textsuperscript{846}

As with car purchase allowance supplemental loans are also granted on the basis of the cheapest car that is appropriate for the applicant’s needs. A comprehensive evaluation is necessary in each individual case, especially so when several cars may be considered appropriate. The issue may often come down to whether the applicant should be granted car purchase allowance together with benefits for necessary adaptations of that car, or car purchase allowance together with a supplemental loan to cover adaptations of the car. Both the cost of purchase and the cost of adaptation are relevant factors, as well as which car is considered the most appropriate car for meeting the applicant’s needs for transport in everyday life.\textsuperscript{847}

\subsection*{10.3.4 Who Is Eligible for Benefits for Driving Instruction?}

Under Section 114 of the Social Services Act, the national government is given wide discretion in setting out the rules and criteria regarding benefits for driving instruction. Section 14 of Executive Regulation nr 719 states that eligibility for benefits for driving instruction requires the applicant to be

\begin{footnotesize}
\textsuperscript{845} General Guidelines nr 7 of 15/02/2011, 182.
\textsuperscript{846} Case C-37-02 National Social Appeals Board.
\textsuperscript{847} Cases C-58-03, C-34-05 and C-36-06 National Social Appeals Board. See also Case C-50-05 National Social Appeals Board.
\end{footnotesize}
already considered eligible for car purchase allowance. Under Section 14 benefits for driving instruction can be granted for the following purposes:

- Driving instruction for the applicant, including a controlling driver’s test
- Driving instruction for a driver for an applicant under 18 years of age
- Evaluative driver’s test for reasons of health by the police authority
- Doctor’s certificate in relation to the application for car allowance
- Doctor’s certificate in relation to renewal of driver’s license for reasons of health
- Installation and removal of training pedals, if the driving instruction takes place in the applicant’s own car

Section 14 further states that the number of hours of driving instruction for the applicant, for which benefits are granted, should be reasonable with respect to the applicant’s general condition and age, and that the number of hours of driving instruction for a driver for an applicant under 18 years of age must be reasonable. The decision to grant benefits for driving instruction often comes with a maximum number of driving school hours stated. Benefits for an evaluative driving test for reasons of health may be granted either when the police authority demands a test before they will decide to issue or renew a driver’s license, or when the municipality considers it doubtful if the applicant’s general condition and age are such that it is possible for them to drive a car and therefore, under Section 6 of Executive Regulation nr 719, demands a test before making the final decision about granting car purchase allowance. Such a test may also be part of the comprehensive evaluation regarding whether a person other than the applicant should function as the driver of the car. Typically benefits may only be granted for driving instruction for one driver for an applicant under 18 years of age.\textsuperscript{848} However, in a case where a 10-year-old lived most of the time with one parent who was responsible for most of his transport in everyday life, the other parent, with whom the child lived every other weekend and some other times, was granted benefits for driving instruction in order to be able to take care of the child’s need for transport at those times.\textsuperscript{849}

\begin{footnotesize}
\footnotespace
\begin{itemize}
\item \textsuperscript{848} General Guidelines nr 7 of 15/02/2011, 214.
\item \textsuperscript{849} Case C-45-03 National Social Appeals Board.
\end{itemize}
\end{footnotesize}
When an entitled person is more than 18 years of age and is granted car purchase allowance and another person (often a spouse or a cohabiting partner) is to function as the driver, benefits for driving instruction cannot be granted, although in certain cases such costs may be covered by other social benefits.\textsuperscript{850} In any case the right to benefits for driving instruction is by no means unconditional, even for those who are granted car purchase allowance and who incur one of the expenses in Section 14. The applicant’s desire to take driving lessons and learn to drive the car, which will typically make the applicant to a considerable degree more resourceful in everyday life, is to be weighed against the total cost of adapting the vehicle so that the applicant can drive it and the cost for driving instruction. The standard to be met appears to be that the degree of increased resourcefulness in everyday life must be reasonable in relation to the total cost. In case law a cost of DKK 402,833.75 has been considered unreasonable in relation to the degree of resourcefulness in everyday life.\textsuperscript{851}

10.3.5 Who Is Eligible for Benefits for Necessary Adaptations to a Car?

Section 13 of Executive Regulation nr 719 states that benefits for necessary adaptations to a car can be granted to an applicant regardless of whether the applicant meet the eligibility criteria for car purchase allowance. Thus, benefits for necessary adaptations to a car come with their own set of criteria and Section 13 lists three specific categories for eligibility:

1. When the police authority demands necessary adaptations

2. When the general health condition of the applicant indicates it

3. When it eases the positioning of the applicant in the car

It should be noted that to grant these benefits there is no requirement that there is a need for transport that to a considerable degree will ameliorate the consequences of the applicant’s reduced functional capacity in everyday life. It appears to be sufficient that there is a need to travel by car, for example in connection with visits to family, travel for holidays, or in connection with social activities, etc. Thus, the need for transport that will meet the eligibility criteria for benefits for necessary adaptations to a car is not necessarily a need

\textsuperscript{850} General Guidelines nr 7 of 15/02/2011, 216.
\textsuperscript{851} Case C-2-07 National Social Appeals Board.
in everyday life, but might be an intermittent need for transport.\textsuperscript{852} The special eligibility requirement in Section 2 of Executive Regulation nr 719, that car allowance to a considerable degree must make the applicant more resourceful in everyday life, however, also applies to benefits for necessary adaptations to a car.

These benefits may be granted to either one or more persons within the same household. The only limitation being that the car must belong to either the applicant or a person within the applicant’s household, and that the car is not already fitted with the adaptation when it leaves the factory. However, as a special rule under Section 13, the benefits can be granted in the form of a fixed sum (DKK 23,764 in 2014) for automatic transmission if the car is less than one year old and if the car is fitted with automatic transmission by the factory. Otherwise, under Section 13 benefits can be granted for repairs, replacement and removal of adaptations on a needs basis. Benefits cannot be granted to cover the running costs, for example cleaning, everyday maintenance or insurance.

To be covered by benefits for necessary adaptations to a car the adaptation must be considered:

- Necessary, in relation to the applicant’s general health condition
- Necessary, in relation to alternative options that are evaluated
- Necessary, in relation to any demands from the police authority, when applicable
- Special, meaning that it is not standard equipment in the car
- To have been performed after the car leaves the factory\textsuperscript{853}

In case law, for example, air conditioning was considered necessary in relation to the general health condition of a child who was very sensitive to changes in temperature. It was also considered necessary in relation to the evaluated alternative options, such as protective solar film on the windows or simply opening the windows.\textsuperscript{854} In a case regarding a child who was sensitive to

\textsuperscript{852} Case 210-10 National Social Appeals Board. See also Case C-36-01 National Social Appeals Board. However, see Case C-6-01 National Social Appeals Board for explicit, and Case C-27-06 for implicit, references to a necessary need for transport in everyday life.

\textsuperscript{853} Cases C-1-07 and C-29-08 National Social Appeals Board and General Guidelines nr 7 of 15/02/2011, 206 and 207.

\textsuperscript{854} Case C-1-07 National Social Appeals Board.
sunlight, protective solar film was not considered necessary, either in relation to the child’s general health condition or in relation to alternative options. A remote control for an engine heater has however been considered necessary in relation to the applicant’s general health condition.

The perceived difference between what may be considered standard equipment and special equipment in a car will shift with time and technological development in the car industry and may to a certain extent also differ between car models. Standard equipment may for example include gas springs in car doors, insulation, lights in car doors etc. Special equipment may for example include automatic transmission, electric parking brakes, lifts, remote control of lifts, hand controls and much more. Power steering was, for example, considered standard equipment when the car was fitted with it as it left the factory. In a van, electric rearview mirrors, electric windows and a single passenger seat were considered standard equipment. In the same case back-seats with three point safety belts were considered standard equipment although the back-seats were installed after the van had left the factory. A wheelchair base and automatic lights on the van’s wheelchair lift were, however, considered to be special equipment.

Repairs to necessary adaptations installed earlier are granted on a needs basis if the cost of repair is not covered by consumer protection law or contract law. As it is a duty on the part of the applicant to make sure that the car, including any adaptations, is covered by comprehensive insurance, benefits for necessary adaptations to a car will only cover those costs which cannot be met by the insurance. The General Guidelines stress the importance of speed in handling repairs so as to minimize the waiting period during which the car cannot be used. The municipality in these circumstances must also, when deciding on an application for repairs, evaluate how the need for transport can be covered during the repair period, for example by temporary cash benefits under the Social Services Act. If the applicant has another adaptation or installation than that for which benefits were granted, the applicant may have to cover any difference in repair costs if the other adaptation is more expensive to repair.

---

855 Case 210-10 National Social Appeals Board.
856 Case C-27-06 National Social Appeals Board.
858 Case C-11-99 National Social Appeals Board.
859 Case C-29-08 National Social Appeals Board.
860 General Guidelines nr 7 of 15/02/2011, 211.
Replacements of necessary adaptations installed earlier are granted on a needs basis under Section 13 of Executive Regulation nr 719. An evaluation is necessary to ensure that the car remains safe and appropriate for the transport needs of the applicant. As the applicant has a duty under Section 15 of Executive Regulation nr 719 to make sure that the car and all adaptations are covered by comprehensive insurance, costs of replacements are in many instances, such as damages due to traffic accidents, typically covered by private insurance and not by benefits for necessary adaptations to a car.

Costs for dismantling necessary adaptations installed earlier are granted on a needs basis under Section 13 of Executive Regulation nr 719. The General Guidelines however state that dismantling costs may only be granted under very special circumstances. In case law, benefits for dismantling have been granted when an applicant, who could earlier drive the car with installed adaptations but for health reasons could no longer do so, needed other persons to function as drivers.

### 10.4 Who Is Eligible for Vehicles as Technical Assistive Devices and Durable Consumer Goods?

Under Sections 112 and 113 of the Social Services Act the municipality is to grant technical assistive devices and durable consumer goods to persons who meet the eligibility criteria, for one or more of three specific purposes, namely when a technical assistive device or a durable consumer good:

1. To a considerable degree can ameliorate the lasting consequences of reduced functional capacity
2. To a considerable degree can ease everyday life in the home
3. Is necessary for the person concerned to exercise a profession

Small vehicles for personal transport are typically granted for the first purpose but may occasionally be granted under the third. The second purpose does not apply to vehicles. Durable consumer goods are typically not granted for objects that are normally part of an ordinary household, or if the object costs

---

862 See General Guidelines nr 7 of 15/02/2011, 211.
863 General Guidelines nr 7 of 15/02/2011, 212.
864 Case C-36-01 National Social Appeals Board.
less than DKK 500. The benefits amount to 50% of the price of the general standard issue of the object concerned. However, if a more expensive item or some special adaptation or installation is necessary due to reduced functional capacity the municipality will pay the necessary extra costs. Further, the municipality must cover all costs if the durable consumer good is to function exclusively as a technical assistive device to ameliorate the reduced functional capacity. From the perspective of the private individual it is therefore more beneficial to have a vehicle granted as an assistive device under Section 112 than as a good under Section 113. If the vehicle is considered a good under Section 113, it is more beneficial for the private individual if the vehicle is regarded as a good that will function exclusively as an assistive device.

To be granted a vehicle for the first purpose in Sections 112 and 113 of the Social Services Act, the vehicle must to a considerable degree ameliorate lasting consequences of reduced functional capacity. The decision about whether a specific object may do this to a considerable degree is comprehensively evaluated based on the applicant’s individual situation. The General Guidelines note that circumstances important for the evaluation may include health, social context, the object’s role in letting the applicant live as others do, compared to people of the same age and with the same general circumstances in life. The evaluation shall also consider any other possible solutions. Whether a vehicle meets the requirement to considerably ameliorate the lasting consequences of reduced functional capacity appears to be closely tied to the level of personal autonomy and independence that the object can be expected to give the applicant in moving about.

To be granted a vehicle for the third purpose in Sections 112 and 113 of the Act the vehicle must be necessary in order for the applicant to exercise a profession. The evaluation shall make sure that the vehicle really is a necessary prerequisite for the applicant to stay connected to the labor market. Regarding both purposes Section 3 of Executive Regulation nr 1432 states that the object issued shall be the cheapest and the most appropriate.

The evaluation is described as comprehensive and aimed at obtaining a general view of the applicant’s situation in everyday life. The General Guidelines state that typically a full description of the impairment, how the applicant manages daily life and how the applicant wishes to arrange everyday

---

865 General Guidelines nr 7 of 15/02/2011, 9.
866 See for example Case C-30-00 and Case C-26-02 National Social Appeals Board.
867 General Guidelines nr 7 of 15/02/2011, 11.
868 Bekendtgørelse nr 369 af 27/04/2011 om metode for god sagsbehandling ved vurdering af nedsat funktionsevne som grundlag for tildeling af handicapkompenserende ydelser efter servicelovens bestemmelser.
life with a view to living as independently as possible, are necessary elements of the evaluation. Aspects included in the comprehensive evaluation are, for example, family status, leisure activities, housing status, work and work-related conditions, education, general health status, any specific illnesses, whether there is any progressive disorder, any other assistance available, any domestic help, etc. The Guidelines specifically note that it is the applicant who knows best how to articulate their individual needs. In short, the applicant should be prepared to give a no holds barred story of her or his life to the municipality.\textsuperscript{869} The municipality will also collect any other information that is considered necessary and relevant for the evaluation. The Guidelines note that the municipality alone decides what information is relevant to the evaluation, and what is not. The municipality may, for example, demand to see transcripts of medical records from a hospital or a clinic, or obtain one or more expert opinions, typically from doctors, physiotherapists, occupational therapists and such, but occasionally also from NGOs or scientific experts.\textsuperscript{870}

As with car purchase allowance the applicant’s ability to walk is of paramount importance in the comprehensive evaluation.\textsuperscript{871} Electric scooters have been granted for the first purpose when the comprehensive evaluation has shown both a lasting impairment to the applicant’s ability to walk and a considerable need to get out for activities outside the home, as related to age and impairment. Examples of a considerable level of activities outside the home include going out on one’s own, shopping and visiting family and friends. A necessary requirement is that the scooter is expected to make the applicant more resourceful in everyday life, and thus to a considerable degree will ameliorate the lasting consequences of reduced functional capacity. When an applicant already had access to crutches, wheelchair and a car bought with car purchase allowance, an electric scooter was refused on the grounds that one more vehicle would not make the applicant more resourceful in everyday life, and that the scooter thus would not ameliorate the lasting consequences of reduced functional capacity to a considerable degree.\textsuperscript{872}

After 2008, with electric scooters generally considered durable consumer goods, such scooters have been seen as an item that will function exclusively as an assistive device in situations when the scooter has no specific value in everyday life for the applicant other than compensating for and ameliorating the lasting consequences of reduced functional capacity. For example, this was the case when the applicant could not travel by any other means of transport

\textsuperscript{869} General Guidelines nr 7 of 15/02/2011, 19.
\textsuperscript{870} General Guidelines nr 7 of 15/02/2011, 24.
\textsuperscript{871} Ankestyrelsen 2007, p 28 and p 30 ff.
\textsuperscript{872} Case C-30-00 National Social Appeals Board.
and the scooter was the only viable option for them to move about outdoors independent of aid from other people.\textsuperscript{873} However, when a scooter to a considerable degree would ameliorate the lasting consequences of reduced functional capacity, but the applicant, albeit with difficulty, had other means of transport available, the electric scooter was granted as an ordinary durable consumer good.\textsuperscript{874}

Repairs and replacements of vehicles paid for as technical assistive devices under Section 112 of the Act are granted according to need under Section 4 of Executive Regulation nr 1432. If the applicant’s need for the assistive device and the reduction in functional capacity has not changed in any marked way, the municipality is not required to make a new comprehensive evaluation. The municipality can instead require the applicant to solemnly declare that circumstances have not altered significantly and the eligibility for repair or replacement is thus concluded. Further, if the circumstances are unchanged and a small vehicle issued under Section 112 of the Act is in need of repair but is not in need of replacement, the municipality shall not make a new comprehensive evaluation with a view to granting or refusing benefits, but has a duty to repair the device.\textsuperscript{875}

According to Section 21 of Executive Regulation nr 1432, repairs and replacements of vehicles issued as ordinary durable consumer goods under Section 113 of the Act may not be granted. For vehicles issued as durable consumer goods under Section 113, but which function exclusively as an assistive device, repairs and replacements are granted according to need, that is, the same as with technical assistive devices, which follows from Section 23 of Executive Regulation nr 1432. In cases when a vehicle is allowed as a durable consumer good but a more expensive good than a standard issue, or certain adaptations or installations are necessary due to the applicant’s reduced functional capacity, Sections 20 and 22 of Executive Regulation nr 1432 specify the extent to which the municipality shall contribute to repairs and replacements in the different situations. This ranges from full coverage according to need, to coverage of 50\% of the costs, to coverage for repairing or replacing only a specific adaptation or installation. Whether a specific vehicle in the individual case is to be considered an ordinary durable consumer good or one that will function exclusively as an assistive device is entirely based on the comprehensive evaluation and its conclusions about how the specific

\textsuperscript{873} Cases 27-10 and 82-10 National Social Appeals Board.
\textsuperscript{874} Case 29-10 National Social Appeals Board.
\textsuperscript{875} Case 28-10 National Social Appeals Board.
vehicle will compensate for the applicant’s specific reduction to functional capacity in the applicant’s social context.\textsuperscript{876}

\textbf{10.5 Impact of Funding on the Right to Car Allowance}

Section 11 of Executive Regulation nr 719 states that renewal of car purchase allowance can be granted, at the earliest, six years after the registration of the previous car bought with this allowance. If the applicant still qualifies for car purchase allowance under the eligibility criteria, the loan and the car will be renewed upon reapplication. This is the so-called six-year rule. Section 11 also lists three exceptions when renewed benefits can be granted before the end of the six-year period:

1. When it is documented by an inspection report that renewal of the car is necessary
2. When the car is totally damaged/a write-off
3. When the car is no longer appropriate due to a change in the applicant’s functional capacity

The General Guidelines comment that the first exception is aimed at “lemons”\textsuperscript{877} and cars with such technical problems and malfunctions that they cannot be used in a practical way, or need excessive repairs. Regarding the second exception the Guidelines note that if the car is deemed a total loss during the first year the insurance company might replace the car entirely, and in such instances the instrument of debt should be adjusted to reflect the switch, and the new six-year period starts with the registration date of the new car. Early renewal under the third exception is a catch-all clause aimed at any changes in functional capacity that require the acquisition of a new car. Renewal under this exception will typically occur due to worsened health conditions, especially for entitled persons with progressive diseases. Other instances include the case when the driver, often a spouse, can no longer assist with getting in and out of the car and a new one with more built-in automatic assistive technology is needed. In very rare cases early renewal might also be triggered by improvement in the health or functional capacity; for example,

\textsuperscript{876} Ankestyrelsen 2007, p 34. See also Cases C-10-99 and C-25-06 National Social Appeals Board.
\textsuperscript{877} “Mandagsbiler” in Danish.
when it becomes possible for someone who earlier had a driver to drive the car themselves.878

Under Section 23 of Executive Regulation nr 719 the maximum amount of car purchase allowance under Section 7, the income cut-off point for calculation under Section 8, and the set amount for benefits for necessary adaptations to a car for automatic transmission under Section 13, are all regulated annually on the 1 January in the so-called rate adjustment percentage, regulated by the Rate Adjustment Percentage Act879. The rate adjustment percentage under this Act is set every year for the following fiscal year and is meant to reflect the general development of prices, inflation etc. The rate adjustment percentage is used for a wide range of budgetary and fiscal calculations in the Danish welfare state; enough to have an impact on the entire Danish economy. Consequently the Danish car allowance is relatively shielded from short-term political attempts to save money by reducing funding. Further, the rate adjustment percentage, and thus the amounts available for car allowance, is a matter entirely for the national government and parliament, giving the municipal authorities rather limited opportunities to influence the extent of funding. In this particular respect the individual legal right to car allowance appears quite strong.

10.6 Impact of Funding on the Right to Vehicles as Technical Assistive Devices and Durable Consumer Goods

Under Section 112 of the Social Services Act, the municipality shall provide benefits to pay for technical assistive devices to eligible persons. Under Section 3 of Executive Regulation nr 1432 benefits are granted for acquiring the most appropriate and cheapest technical assistive device available. Further, under Section 112 of the Act, the national government has full discretion in setting out and regulating what objects may be granted as technical assistive devices. Regarding vehicles no such specific limitations have been set down. What constitutes a vehicle as a technical assistive device in law is thus constructed in relation to the evaluation of the individual applicant’s functional capacity. No predefined exhaustive list of vehicles as technical assistive devices exists. Thus any given vehicle (or adaptation of a vehicle) that can be used to ameliorate a reduced functional capacity for an eligible person might be considered a technical assistive device.880 In reality

---

878 General Guidelines nr 7 of 15/02/2011, 199-201.
879 Lov nr 373 af 28/05/2003 om en satsreguleringsprocent.
880 See also General Guidelines nr 7 of 15/02/2011, 25-26.
the comprehensive evaluation process ensures that only a limited number of vehicles are ever allowed as technical assistive devices. In the process the guiding compensation principle is construed and interpreted so as to include a normative argument against overcompensation which then acts as a major limiting factor on individual rights to benefits.\footnote{See for example Cases C-10-99, C-25-06 and 121-10 National Social Appeals Board \textit{e contrario} and General Guidelines nr 7 of 15/02/2011, 47. See also Ketscher 2008, p 149.} From a purely formal perspective, however, the legal construction of the benefits as being issued either in kind, or as cash in set percentages of the consumer price on the market, means that the benefits are relatively well shielded from political tampering with the funding.

\section*{10.7 Who Is Obliged to Provide Car Allowance?}

Formally the responsibility for providing car allowance rests solely with the municipalities. In reality, due to the technical nature of testing, buying and adapting cars for people with varying individual demands and impairments, several instances may be more or less involved. The municipalities are also free to organize their services with regards to local conditions and traditions. Consequently the applicant in a small rural community may face a different type of municipal organization than the applicant in a major city. Finding out which car, or which type of car, is appropriate in relation to the applicant’s needs often requires the practical testing and trying out of different car models over a period of time.\footnote{Hansen 2009, p 7 ff.}

When an application for car purchase allowance is granted, under Section 9 of Executive Regulation nr 719, and if the municipality and the applicant so agree, the testing and adapting procedure can be outsourced by the municipality to the applicant and a private enterprise, for example a car manufacturer, a workshop or some other business that has suitable technical expertise. The municipality cannot, however, relinquish control, as the process of the entitled individual testing different cars will have an impact on the size of the loan, that is, the testing will help determine which car may actually be considered the cheapest one appropriate for the applicant’s need.

The whole process, from the formal application via evaluation and testing to receiving the loan and finalizing the purchase, is not usually a rapid affair. The average time for processing new applications was 39.5 weeks in 2010. Reaplications, that is, applications where the applicant has already bought a
car using car purchase allowance, and so has gone through the process before, are somewhat swifter but still took an average of 31.3 weeks in 2010. In 16% of the cases finalized in 2010 the entire process had taken more than a year. The process has understandably been criticized for being slow and inert, and the possibility of outsourcing the testing and adaptation procedures was introduced in 2010 in an attempt to help speed matters up.  

10.8 Who Is Obliged to Provide Vehicles as Technical Assistive Devices and Durable Consumer Goods?

Section 112 of the Social Services Act states that the municipalities shall provide technical assistive devices for eligible persons. Section 112 also gives a mandate to the municipality to choose specific contractors to supply specific devices, if the municipality so desires. The eligible person is also given a mandate, albeit with certain exceptions and limitations, to choose any supplier to provide a technical assistive device that has been granted, that is, the applicant is not bound to the municipality’s contractor. When choosing an independent supplier the person purchases the technical assistive device and is reimbursed by the municipality. The reimbursement covers the cost of the purchase up to the cost of the cheapest and most appropriate device. However, if the municipality has a contractor for the specific device, and the private individual prefers an independent supplier, the reimbursement covers the cost of the purchase up to the price the municipality would have paid had the device been delivered by the contractor. Further, when the municipality, with or without the help of a contractor, can provide a technical assistive device completely identical to the one desired by the eligible person, the individual has no right to choose another supplier. According to the national government “completely identical” shall be understood to mean that the eligible person must be satisfied with a used or second hand device, that is, a functional device previously used by other persons. Thus there is no unconditional right for the individual to choose an independent supplier or to acquire a brand new device.

If the eligible person is entitled to choose an independent supplier and proceeds to do so, a specific duty is imposed on them. A requirement of the benefits is that the technical assistive device chosen by the entitled individual must meet the professional specifications and appropriate standards set by

883 Ankestyrelsen 2010, p 15 f. and LFF 2010-03-17 nr 168.
884 LFF 2010-01-27 nr 114, Almindelige bemærkninger 3.1 Frit valg af hjælpemidler.
the municipality.\textsuperscript{885} Section 6 of Executive Regulation nr 1432 explicitly states that it is the applicant’s responsibility to make sure that all such criteria are met.

Section 113 of the Social Services Act states that the municipalities shall provide durable consumer goods to eligible persons. The entitled person purchases the good and is reimbursed by the municipality by varying amounts depending on the type of grant; typically 50\% of the cost, or full reimbursement if the vehicle functions exclusively as an assistive device. The entitled person can make the purchase from any supplier or retailer, and may also purchase a more expensive good than granted, provided that they pay the difference in cost.

\textbf{10.9 Legal Guarantees for Entitlement to Car Allowance}

In Danish law, car allowance is considered an ongoing, or continuous, form of social support. The benefit is not determined, expedited and then the matter is concluded. Rather, car allowance is viewed as a continuous needs-based social benefit that starts with the first application and ends only when the last car is sold and the applicant is no longer eligible or dies. As an example and illustration of the continuous character of car allowance, the fifth duty on the part of the applicant listed in Section 15 of Executive Regulation nr 719 states that the health eligibility criteria and any work or educational eligibility criteria for car purchase allowance must continue to be met. This means that any change in these conditions may lead to the entitled person no longer meeting the eligibility criteria and hence to the loss of benefits. For example, if the need for transport was work-related, then unemployment can not only lead to the loss of a job, but also to the loss of car allowance. If the need for transport was education-related, then graduating successfully from an education may also mean the loss of car allowance. Perhaps worse yet from the perspective of the entitled individual is that the General Guidelines take a very strict position. Not only shall health, work or educational criteria be met for the entire six-year period but, apparently without basis in an Act or an Executive Regulation, the social circumstances must also continue to be met for the entire six-year period. The Guidelines explicitly acknowledge that if a person moves somewhere else, or just to another part of town, general public transport may be more readily available at that location which leads to the entitled individual no longer being eligible, and thus to the loss of car

\textsuperscript{885} LFF 2010-01-27 nr 114, Bemærkninger til lovforslagets enkelte bestemmelser, Til § 1.
allowance. A change in health, a change in employment, moving to a new address, a new bus line beginning to operate nearby; all these everyday life events may lead to a sudden loss of car allowance. From the perspective of a private individual with a desire to use a car in the manner of a typical car owner, the certainty, predictability and durability of the car allowance are influenced by factors that probably quite untypically influence using their private cars by most car owners.

If the situation for the private entitled individual changes during the six-year period so that one or more of the eligibility criteria are no longer met, or one or more of the duties in Section 15 and 16 of Executive Regulation nr 719 are no longer honored, or the car is taken abroad for longer than a month without the consent of the municipality, the municipality can, under Section 17, decide to repeal the loan and revoke the exemption from fees and taxes. On repeal whatever is left of the loan is immediately due for full repayment. It should be noted that this means the entirety of the remaining loan, including the part which is otherwise repayment-free. If the formerly entitled person cannot clear the loan by the end of the month after the repeal, the municipality may allow it to be repaid in installments. However, in several cases of repeal the municipality is required to either grant an extension, that is, a grace period before the loan falls due, or to write off the remaining loan. Under Section 19 the municipality shall grant an extension in cases where the person lacks the ability to repay the remainder due to sickness, unemployment or other causes. In these cases a means-test is carried out to determine the amount that can reasonably be repaid. The income and needs of any immediate family, that is, the income and needs of a spouse or children, are included in the means-test. In cases where the loan is repealed due to changes in health or need for transport which are caused by the impairment, the municipality shall write off the remainder altogether. The example mentioned in Section 19 is the case when the perceived need for transport is reduced due to the formerly entitled person having to move to a nursing home or some other care facility. In these cases the sale of the car and the return of the net proceeds from the sale to the municipality is typically a necessary prerequisite for the write-off.

The formal legal guarantees for car allowance are otherwise quite strong and in a formal sense the individual legal right is well protected. A municipal decision to refuse any form of car allowance can be administratively appealed by the refused applicant to the National Social Appeals Board under Section 166 of the Social Services Act. The National Social Appeals Board operates

---

886 General Guidelines nr 7 of 15/02/2011, 228.
887 Case 60-10 National Social Appeals Board.
888 General Guidelines nr 7 of 15/02/2011, 238.
under Chapter 10 of the Act on Legal Security and Administration in the Social Field and the Board has complete discretion in relation to any case before it. A final decision from the National Social Appeals Board is truly final in the sense that it is the final instance of administrative appeal.

10.10 Legal Guarantees for Entitlement to Technical Assistive Devices and Durable Consumer Goods

The formal legal guarantees for technical assistive devices and durable consumer goods are quite strong and in a formal sense the individual legal right is well protected. A municipal decision to refuse any form of technical assistive devices and durable consumer goods can be administratively appealed by the refused applicant to the National Social Appeals Board under Section 166 of the Social Services Act. The National Social Appeals Board operates under Chapter 10 of the Act on Legal Security and Administration in the Social Field and the Board has complete discretion in relation to any case before it. A final decision from the National Social Appeals Board is truly final in the sense that it is the final instance of administrative appeal.890

889 Bekendtgørelse nr 1019 af 23/09/2014 af lov om retssikkerhed og administration på det sociale område. 890 For issues concerning all entitlements to car allowance, technical assistive devices and durable consumer goods, a person that has exhausted the possibilities of administrative appeal still retains the possibility to lodge judicial appeals in the regular courts; although this is a rather impractical possibility.
11 Car Allowance as a Social Right in Norway

The national government is given wide discretion in Chapter 10 Section 7 of the Social Security Act\textsuperscript{891} of 1997 to regulate the details and administration of car allowance. In 2003 car allowance was normatively reformed. The general eligibility criteria were not supposed to be affected by the reform, and the wording in the Act was not changed, however, the national government expected to save money under the reformed rules.\textsuperscript{892} The entire change was carried out by the national government which abolished Executive Regulation 265 and issued the current Executive Regulation 290\textsuperscript{893}. The national government also expressed the ideological intention to reallocate resources from eligible people with moderate functional impairments to eligible people with severe functional impairments, as the latter group were expected to need more expensive vehicles.\textsuperscript{894}

The Norwegian Labor and Welfare Administration\textsuperscript{895} (NAV) is responsible for the management and administration of car allowance. In this capacity the NAV has issued so-called Circulars\textsuperscript{896}, which function as general guidelines for those handling applications and making decisions about car allowance within the NAV. Consequently these circulars are important sources for car allowance law.\textsuperscript{897}

The changes to car allowance during the 2000s provide an illustrative example of normative stability and material changes in framework law. The forms of benefit were changed by the national government through executive regulations. The possibilities for the renewal of benefits were reduced. During the period a new authority, the NAV, was created to manage, administer and oversee large parts of the Norwegian welfare state, including car allowance. The new authority issued new circulars with new regulations concerning car allowance. Yet, not a word was changed in the relevant sections of the Social Security Act, governing car allowance. The national government developed and adjusted new forms of benefits and new material directions entirely within the normative framework of the Act.

\textsuperscript{891} Lov 28 februar 1997 nr 19 om folketrygd.
\textsuperscript{892} Circular § 10-7 Letter h, Generelt og St prp nr 1 (2002-2003), p 37.
\textsuperscript{893} Forskrift 7 mars 2003 nr 290 om stønad til motorkjøretøy eller annet transportmiddel.
\textsuperscript{895} Arbeids- og velferdsdirektorat (NAV).
\textsuperscript{896} “Rundskriv” in Norwegian.
\textsuperscript{897} See also Spidsberg 2008, p 115 f.
Under Chapter 2 and Chapter 10 Section 2 of the Social Security Act, the social rights under Chapter 10 of the Act, which include car allowance, are available to anyone who legally has either lived continually in Norway for three years, or has lived in Norway for one year during which time that person has been physically and psychologically capable of performing normal waged work. Exceptions to the three-year rule under Chapter 10 Section 2 are possible for people coming to live in Norway as refugees, for people who have lived in Norway intermittently, or when special circumstances otherwise make it reasonable.

After the reform in 2003 car allowance comes in four forms of benefit:

- Category 1 car purchase allowance
- Category 2 car purchase allowance
- Benefits for adaptation and equipment of a motor vehicle
- Benefits for driving instruction

11.1 Car Allowance – a Rights/Duties Relation?

Under Chapter 10 Section 7 of the Social Security Act a person eligible under Sections 5 or 6 of the Act can, among many other benefits, be granted benefits in the forms of borrowing the item, cash subsidies, or a loan in cash to pay for a motor vehicle or some other means of transport. Legal scholars have noted that the word “can” in Section 7 shall not be understood to mean that the NAV may exercise full discretion to grant or refuse benefits when the general eligibility criteria in either of Sections 5 or 6 are met. Rather, it means that the NAV shall comprehensively evaluate which of the several benefits in Section 7 is to be granted to the eligible individual.\(^89\) Thus, as long as a person is qualified under the general eligibility criteria in the Act, that person has a general legal right to benefits, though not a specific right to a specific benefit.

Persons eligible for category 1 car purchase allowance may, under Section 5 of Executive Regulation 290, freely choose any motor vehicle. They may for example choose a used car instead of a new one. Under Section 5 the eligible person is responsible for ensuring that the vehicle is appropriate and can last

for the period of the benefit. The eligible person is also responsible for ensuring that the vehicle can be properly adapted, if necessary.

Persons eligible for category 2 car purchase allowance may not choose any vehicle. Under Section 6 of Executive Regulation 290 the NAV controls the selection and the procurement of suitable vehicles. Under Section 5 the NAV may choose to either reissue a vehicle that has been previously used if that vehicle can be expected to last for eleven more years, or the NAV can purchase a new vehicle if no appropriate previously used vehicle is available. However, Section 6 opens up the possibility for the eligible person to choose a more expensive vehicle than the one the NAV finds appropriate, for example if the person wants a new car while the NAV has an appropriate used one readily available for reissue. In such a case the eligible person must, under Section 6, pay in cash the difference in cost between the cheaper appropriate vehicle and the more expensive appropriate vehicle.\(^\text{899}\)

Eligible persons have a duty under Section 7 of Executive Regulation 290 to guarantee that a vehicle bought with support from any category of car purchase allowance will be registered with the eligible person as owner. The eligible person is also responsible for seeing to it that they have a valid driver’s license, or be willing to take a driving test as soon as possible after receiving the vehicle. In cases where medical or other reasons, such as age, make it impossible for the eligible person to have a valid driver’s license this duty may be replaced with a written declaration from a suitable person with a valid driver’s license that they will be responsible for driving and maintaining the vehicle.\(^\text{900}\) A typical example of the latter situation is when a child is eligible for car purchase allowance and a parent takes on the responsibility of driving and maintaining the vehicle.

Under Section 10 of Executive Regulation 290, any car purchase allowance is paid directly to the seller of the vehicle. The eligible person thus never receives any actual money, and the allowance in practice functions as a discount on the purchase sum of the vehicle.

Chapter 10 Section 7 Letter h of the Social Security Act lists car allowance as being for a motor vehicle or other means of transport. Section 2 of Executive Regulation 290 defines a motor vehicle as a vehicle driven by a motor, intended to run on the ground at a speed higher than 10 kilometers per hour. Electric wheelchairs are explicitly excluded from car allowance as they are considered technical assistive devices which are subject to their own set of

\(^{899}\) See also Circular § 10-7 Letter h, 6 Til § 6.

\(^{900}\) Circular § 10-7 Letter h, 7 Til § 7.
rules and regulations. Sections 2 and 5 describe category 1 vehicles as ordinary private cars and category 2 vehicles as specially adapted vans. The NAV defines category 2 vehicles as vans that are reregistered as private cars and specially adapted. Specially adapted hatchbacks and minivans, or multipurpose vehicles, may also be included in category 2 when considered more appropriate than a van. The special adaptation is mandatory for all category 2 vehicles and the vehicle must also be fitted with an elevator or ramp.\footnote{Circular § 10-7 Letter h, Generelt.} All types of vehicles not included in category 2 are considered to be category 1 vehicles.\footnote{Circular § 10-7 Letter h, 2 Til § 2.} As a consequence a van can be a category 1 vehicle if it is not specially adapted in the way a category 2 vehicle is supposed to be.\footnote{Circular § 10-7 Letter h, Generelt.} As another consequence, other means of transport are always considered category 1 vehicles, but with one exception. That exception is low-speed vehicles, or quadricycles\footnote{“Mopedbil” in Norwegian.}, which fall between the two categories and thus form a subcategory of their own. Car purchase allowance for acquiring a low-speed vehicle is granted on the same conditions as car purchase allowance for category 2 vehicles. Special conditions, however, typically apply, for example that the eligible person must follow the maintenance and service policy recommended by the supplier, and low-speed vehicles may also be eligible for renewal sooner than after the customary eleven years.

Section 2 of Executive Regulation 290 defines other means of transport as snowmobiles, boats and suchlike, and the regulations for category 1 motor vehicles are applied to them as far as they fit. Car purchase allowance for the acquisition of other means of transport can only be granted when they are considered more appropriate than a motor vehicle, for example when the terrain or the road conditions are such that a car would be impractical.\footnote{Circular § 10-7 Letter h, 2 Til § 2.}

The question of who can exercise ownership rights and disposition over a vehicle bought with the support of car purchase allowance is complex and differs between the two categories. Section 7 of Executive Regulation 290 explicitly states that the vehicle financed by either category of car purchase allowance is the property of the private individual. Regarding vehicles financed by category 2 car purchase allowance the statement of ownership in Section 7 appears to be not so much a declaration that the person may autonomously exercise ownership rights, as it is a declaration of limited responsibility for the vehicle on the part of the national government. At least
for vehicles in this category, what is framed as a property right resembles in reality a set of duties and responsibilities on the part of the eligible individual.

For example, it is mandatory under Section 16 of Executive Regulation 290 that the private individual has a comprehensive insurance for the category 2 vehicle, regardless of its age and condition. The private individual is further required to maintain the vehicle according to the recommended service policy from the manufacturer. The NAV also reserves the right to stipulate further and more detailed conditions, either in the decision to grant car allowance or in the written instrument of debt. For both categories of car purchase allowance the benefit is paid directly to the seller under Section 10. The eligible person thus never has any disposition of the cash benefit. Yet, under Section 16, the national government shall have full security for the cash benefit for all vehicles covered by a written debt instrument\textsuperscript{906} between the eligible individual and the NAV. In category 2 vehicles the national government shall further have special security for unpaid purchase money\textsuperscript{907}.

Matters of debt security aside, category 2 vehicles are still not freely available for the eligible person to use. For example, the written debt instrument must reflect that the eligible person is not allowed to let anyone borrow the vehicle, for any period of time, without the explicit consent from the NAV.\textsuperscript{908} Also, while comprehensive insurance is a mandated duty on the part of the private individual, all payments under such an insurance policy in the case of a total damage (a write-off of the vehicle) must go to the NAV.\textsuperscript{909}

From Sections 15 and 16 of Executive Regulation 290 it follows that in cases where a person no longer fulfills the eligibility criteria, or if the individual duties are breached and not fulfilled, the financial relationship between the national government and the formerly eligible individual shall be settled and dissolved. For category 1 car purchase allowance this is accomplished by the person’s paying off any remaining debt. For category 2 on the other hand the vehicle itself shall be returned to the NAV. Only if the vehicle is in such a condition that it is not suitable for reallocation to another person, may the difference be paid off in cash. Any special equipment or adaptations paid for by the national government shall be returned to the NAV in all cases. From the viewpoint of rights and duties a category 2 vehicle thus resembles rather an item loaned than an item owned.

\textsuperscript{906} “Gjeldsbrev” in Norwegian.
\textsuperscript{907} “Salgspant” in Norwegian.
\textsuperscript{908} Circular § 10-7 Letter h, 7 Til § 7.
\textsuperscript{909} Circular § 10-7 Letter h, 8 Til § 8. See also for example TRR 2001-2210.
11.2 Who Is Eligible for Car Allowance?

Chapter 10 of the Social Security Act lists two groups of general eligibility criteria. In Chapter 10 Section 5 the normative objective is to increase functional ability in working life and in Chapter 10 Section 6 the normative objective is to increase functional ability in everyday life. Every private individual applying for car allowance must fit the general eligibility criteria in one or other of these sections in order to proceed in the evaluation process.

Car purchase allowance is the form of car allowance which has the most elaborate set of normative eligibility criteria. Chapter 10 Section 4 of the Act states that car purchase allowance cannot be granted to a person who becomes functionally impaired after the age of 70. The circular notes that in practice this means that a person needs to have been cut off from utilizing general public transport for medical reasons before the age of 70 to be eligible for car purchase allowance.\(^{910}\)

Section 3 of Executive Regulation 290 declares that a person who meets the general eligibility criteria in either of Sections 5 or 6 in Chapter 10 of the Act will also have to fulfill certain specific eligibility criteria. The private individual must show a real and considerable need for transport. Further, the individual’s impairment must be of such a nature that traveling by bus, train, tram, etc is either not possible, or causes strain of a lasting character such that it is unreasonable to require it. Even so, car purchase allowance shall only be granted to a person whose real and considerable need for transport cannot be covered satisfactorily by the person’s family, by special transport services for people with disabilities or in some other fashion, possibly with aid from other public benefits such as basic benefit for transport.

If the eligibility criteria in the Act are met, car purchase allowance can be granted under Section 3 of Executive Regulation 290 to persons who due to lasting mobility difficulties need a private vehicle to:

- a) travel to and from a place of work or education, or
- b) perform the function of home worker, or
- c) prevent or change the isolation of their existence, or

\(^{910}\) Circular § 10-4.
d) relieve the families in those instances where the impairment leads to a particularly heavy burden of care, and thus contribute to preventing admission to institutionalized care and suchlike.

11.2.1 Who Is Eligible for Car Allowance to Increase Functional Ability in Working Life?

Under Chapter 10 Section 5 of the Social Security Act persons are eligible for benefits under Section 7, including car allowance, who due to disease, injury or infirmity either:

a) have had a lasting reduction in their capacity to perform waged work, or

b) have had their possibilities to choose a profession or workplace considerably limited.

Section 5 further states that factors of special importance when evaluating eligibility are age, functional capacities, education, professional background, work opportunities in the domicile and work opportunities in other places where it is reasonable for the person to accept a job offer. Section 1 of Executive Regulation 290 further requires special consideration of how best to preserve the applicant’s health, when evaluating eligibility. In all cases Section 5 stipulates that benefits shall be necessary and appropriate in terms of the objective that the private individual shall either get or keep an appropriate job.

Section 5 of the Act eliminates four groups of people from eligibility who are receiving other benefits. People receiving old age pensions or certain private contract pensions are not eligible. Those receiving time limited disability benefits or disability pensions are only eligible for car allowance under Section 5 if it is likely that these benefits will be reduced in the future, either partly or totally.

Section 18 of Executive Regulation 290 explicitly excludes persons who receive an old age pension under Chapter 19 of the Social Security Act, or a contract pension with certain supplements, from eligibility for car allowance with the objective of their getting or keeping adapted work.

The NAV Circular states that the eligibility criteria in Section 5 are of a strictly medical nature and that they should be interpreted quite schematically. For eligibility the presence of some kind of medical condition is necessary, which
then leads to a reduction in functional capacity, which in turn leads to a reduction in the capacity to perform waged work. In any case the reduction in functional capacity must be the main reason for the reduction in the capacity to work.911 This schematic interpretation has been criticized for being too rigid and it has been argued that the criteria should be interpreted rather to indicate causality between impairment and a reduced work capacity, without necessarily defining the exact order or magnitude of causes and effects.912

In case law the medical criteria have been linked to the applicant’s ability to use general public transport. For example, general weakness of the body, scoliosis and club foot were not considered serious enough to stop the applicant from traveling by bus, even though such travel was acknowledged to be somewhat burdensome.913

The eligibility criteria in Chapter 10 Section 5 of the Act require that the applicant has either suffered a lasting reduction in the capacity to perform waged work or has had their possibilities to choose a profession or workplace considerably limited. Regardless of which of these two criteria may fit the applicant, a comprehensive evaluation process is required in each individual case. The comprehensive evaluation is not only to take into consideration the applicant’s current situation, but also evaluate future possibilities on the labor market, taking due consideration to health limitations and medical prognosis. In addition to the medical data, the comprehensive evaluation shall also take into account age, general functional capacity, education, professional background and the possibilities of finding work near the applicant’s home or at other places where it is considered reasonable that the applicant should work.914

The NAV stresses the importance of helping a working applicant to keep a job. A person with an established position on the labor market will typically fit the criterion possibilities to choose a profession or workplace considerably limited when such a person cannot continue in the original profession. In these cases the evaluation can also consider that people with an established position on the labor market would typically experience greater difficulties in changing professional career than a person with no such position. When evaluating younger applicants, especially persons without professional education or experience, the main aim of the comprehensive evaluation is to establish whether the impairment is of such magnitude and importance that the

911 Circular § 10-5, 1.1.1.
913 TRR 2004-3311.
914 Circular § 10-5, 1.2.4.
possibilities of choosing a profession or workplace are considerably limited in relation to what the young person would have experienced if healthy.  

The reduction in work capacity must be lasting. The lasting criterion is important for many disability-related benefits in the Social Security Act. The criterion is usually understood to mean duration of at least two to three years, though cases of terminal conditions are always understood as lasting. The circular concludes that a condition is considered lasting when it can be expected to last longer than two years.

According to the circular the vehicle must also directly redress or lessen the consequences of reduced functional capacity. That having a vehicle would improve the applicant’s general possibilities or position on the labor market is not sufficient qualification for car allowance. The Social Security Court has stated that there exists no individual right, under Chapter 10 Section 5 of the Act, to have an optimal solution. The objective is rather not to grant larger or more comprehensive benefits than are needed for the applicant to get or keep an appropriate job. The benefit itself shall also be considered necessary and appropriate. What constitutes an appropriate job or an appropriate benefit is ultimately left for the individual evaluation, and not the applicant, to decide.

11.2.2 Who Is Eligible for Car Allowance to Increase Functional Ability in Everyday Life?

Under Chapter 10 Section 6 of the Social Security Act a person is eligible for benefits under Section 7, including car allowance, who due to disease, injury or infirmity has a considerable and lasting reduction to functional ability in everyday life. The benefits shall be granted in conjunction with necessary and appropriate measures to either increase the person’s functional ability in everyday life or to have the person tended to at home.

The circular articulates the ideological and normative objectives of the benefits. The main objective is to grant and finance benefits that can

---

915 Circular § 10-5, 1.2.4.
917 Circular § 10-5, 1.1.1.
918 Circular § 10-5, 1.1.2.
919 TRR 2002-2288.
920 Circular § 10-5, 1.2.3.
ameliorate the consequences of the impairment in everyday life. The idea is to help people with disabilities to function better and to reduce the risk of social exclusion because of the impairment. The final objective is stated as being to grant benefits that will allow people with disabilities to live as others do.921

In case law the ideological and normative objectives have sometimes been framed quite differently. One Court of Appeal has stated that car allowance is not social assistance aimed at some optimal solution for the private individual’s transport problems. Rather, the eligibility criteria are strict, and the benefit is entirely subsidiary to other transport-related services and benefits, including basic benefit for transport and special public transport for people with disabilities.922 The Social Security Court has stated that while car allowance might ease the everyday life, the eligibility criteria are strict, and that the national regulations do not aim to find an optimal solution to the private individual’s transport needs.923

The eligibility criteria in Chapter 10 Section 6 of the Act require that the applicant’s reduction in functional ability has occurred due to disease, injury or infirmity, that the limitation on everyday life is both considerable and lasting, and that granting car allowance is considered both necessary and appropriate in order to achieve the normative objectives. To ensure that all aspects are met, a comprehensive evaluation process is required in each individual case.

The reduction in functional ability must exist due to disease, injury or infirmity. In case law a 32-year-old man with severe back pain and serious obesity was denied car allowance as the court concluded that the obesity was the chief cause of his mobility problems and that the obesity was not a disease, injury or infirmity.924

The considerable criterion must be individually evaluated with regard to the situation and the circumstances in each individual case.925 The circular states that the comprehensive evaluation must consider the consequences of the impairment for the applicant, and that the individual’s need for help in the specific situation is what determines whether or not the considerable criterion is met.926

921 Circular § 10-6, 1.1.
922 LG 2003-53937.
923 TRR 2008-1954.
924 TRR 2004-4581. See also Spidsberg 2008, p 122.
926 Circular § 10-6, 1.2.1.
As mentioned above, the lasting criterion is important for many disability-related benefits in the Social Security Act. This criterion is usually understood to mean duration of at least two to three years, though terminal conditions are always understood as being lasting. However, the Social Security Court has noted that, while in most cases, the two to three years are calculated from the point in time when the injury or impairment occurred, in relation to car purchase allowance granted under Chapter 10 Section 6 of the Social Security Act, the two to three years will be calculated as a future prognosis from the time of application for the allowance.

### 11.2.3 The Everyday Life Criterion

The everyday life criterion is to be understood to mean how the applicant can perform everyday tasks in everyday life, and to what extent the performance is impaired due to reduced functional ability. These everyday tasks are understood to be practical tasks, connected to some kind of activity, for example all forms of communication and mobility. The scope of everyday tasks in everyday life is still limited. For example, while most activities in or around the home are typically included, such activities as exercise, sports, hobbies, recreation and suchlike are not. These activities are only included if they occur often enough to be considered a real part of the private individual’s everyday life, that is, occurring more or less daily. The national government has made it clear that these limitations were introduced purely for economic reasons as a reaction to generous case law where the courts had begun to interpret the everyday life criterion more widely. A more generous interpretation of the everyday life criterion may, however, be made regarding very young persons, 18 to 26 years old, if a vehicle could help in training, stimulation or other activation with a view to sustaining or improving functional capacity. Civic activities are included in the everyday criterion insofar as these activities occur in the context of political, civil or non-governmental organizations, and if the activities are not considered economic in nature. Excluded as being of an economic nature are, for example, activities in trade unions and various hobbies.

---

928 TRR 2009-775.
929 Circular § 10-6, 1.2.1.
930 Circular § 10-6, 1.2.4.
932 Circular § 10-6, 1.2.4 and Ot prp nr 10 (2003-2004), p 18.
933 Circular § 10-6, 1.2.4.
The distinction between activities in everyday life vis-à-vis leisure activities has been upheld in case law, but with certain expansive modifications. The principle established in case law appears to be that as long as certain leisure activities form a part of the comprehensive evaluation of the individual’s real and considerable need for transport in everyday life, which eventually leads to a decision to grant car allowance, such leisure activities must also be included in the everyday life criterion.934

11.2.4 The Necessary and Appropriate Criteria

When car allowance is granted it has to be considered necessary and appropriate in conjunction with all benefits and services under the Social Security Act for the private individual. The necessary criterion is mostly relevant in relation to other possible benefits or services, such that the applicant’s transport needs cannot be met by any reasonable measures other than car allowance. Both the circular and case law clearly state that there is no individual or collective right to an optimal solution, only to reasonable measures.935

The appropriate criterion is mostly relevant in relation to the private individual’s capacity to use and handle a vehicle. For example, if the applicant’s general health is such that it is practically possible to drive or ride in a vehicle, or if it can be expected that the applicant will be able to get a driver’s license. Other questions may arise when the nature of the applicant’s impairment is such that coercive or forceful measures may sometimes be necessary. In such cases the appropriate criterion also includes all aspects of legality and Rechtsstaat values.936

In case law the appropriate criterion has been relevant, for example, when an applicant was refused car purchase allowance in first instance on the grounds that he did not have the private economy to keep and sustain a car. In this case the final decision from the court stated that such personal economic circumstances were not part of the criterion and the case was referred back to first instance for a new decision.937 In a similar case with a similar final outcome the court noted that there is no basis in the Act nor in the Executive Regulation to refuse car purchase allowance based solely on the applicant’s

935 Circular § 10-6, 1.2.2 and TRR 2002-3387.
936 Circular § 10-6, 1.2.3.
937 TRR 2004-2270.
personal financial situation and that such a criterion should not otherwise be construed or perceived to exist.\footnote{TRR 2011-196.}

\subsection*{11.2.5 The Lasting Mobility Difficulties Criterion}

If the applicant is considered to meet the general eligibility criteria in the Social Security Act, the next step in the comprehensive evaluation is to ensure that the more specific eligibility criteria in Section 3 of Executive Regulation 290 are also met. The first set of criteria in Section 3 is that the applicant’s need for a vehicle is due to lasting mobility difficulties, and that the functional impairment shall be of such nature that traveling by bus, boat, train, tram and suchlike is either not possible or causes such strains of a lasting character that it is not reasonable to require it.

The private individual’s mobility difficulties shall be evaluated both relative to the person’s medical condition and to the actual conditions of communication in the person’s residential area. The main point being, that their difficulties prevent the applicant from readily utilizing general public transport. As has been described above, the lasting criterion is typically interpreted conformally in the Social Security Act so as to mean being of at least two to three years duration, though terminal conditions are always considered as being lasting.\footnote{Circular § 10-7 Letter h, 3 Til § 3.}

The impossibility or unreasonableness of traveling by general public transport is evaluated differently depending on whether the applicant’s need for transport is based on everyday work, or on everyday life. According to the circular the difficulties will be considered much more important and pronounced if the applicant travels daily to and from work.\footnote{Circular § 10-7 Letter h, 3 Til § 3.} This differentiation has also been upheld in case law. For example a 44-year-old retired applicant with severe back pain was considered able to choose flexibly when to travel by general public transport, at times convenient for his health and needs, and was denied car allowance mainly for that reason.\footnote{TRR 2008-1962.} An indirect consequence for the private individual is that general eligibility under Chapter 10 Section 5 of the Act is more beneficial for the applicant than general eligibility under Chapter 10 Section 6 of the Act.
11.2.6 An Individual Duty to Undergo Psychological Treatment

Mobility difficulties can be caused by either physiological or psychological impairments or a combination of both. When the impairment is considered psychological rather than physiological the comprehensive evaluation typically requires medical statements from specialist psychologists or psychiatrists. Such statements shall contain information both concerning the treatment the applicant has received and what the results are, or can be expected to be.\textsuperscript{942}

When the difficulties are mainly or purely psychological in nature, case law shows that while mobility difficulties may or may not be acknowledged as sufficiently severe, it is still very difficult to meet the lasting criterion in Section 3 of Executive Regulation 290. The possibilities for therapy and medical treatment must typically be completely exhausted before psychological difficulties can be considered both lasting in character and severe enough to make traveling by general public transport either impossible or causing severe strains.\textsuperscript{943}

Case law on lasting mobility difficulties which prevent the applicant from using general public transport actually indicates that as far as psychological impairments are concerned, an individual duty exists on the part of the private individual to undergo not only treatment but also to undergo and exhaust specific forms of psychological treatment in order to meet the first set of eligibility criteria in Section 3.\textsuperscript{944} The individual duty to undergo treatment appears to have been created primarily on a legal basis, that is, not necessarily on a medical basis. In a case where the applicant had undergone treatment some 20 years previously without any positive result, and where the psychiatric medical expertise expressed skepticism regarding any possibilities obtaining positive results from renewed treatment, car allowance was still denied as the Social Security Court stated that it could not entirely rule out the possibility that a certain form of therapy would reduce the symptoms sufficiently to make it reasonable for the applicant to travel by general public transport.\textsuperscript{945} The court has also stated that if therapy is demanded, there must be a real possibility that it will succeed. In a case where the possibilities of succesful therapy had been exhausted, the applicant was granted car purchase allowance.\textsuperscript{946}

\textsuperscript{942} Circular § 10-7 Letter h, 3 Tül § 3.
\textsuperscript{945} TRR 2009-357.
\textsuperscript{946} TRR 2012-20.
11.2.7 The Impossible or Unreasonable to Travel by General Public Transport Criterion

Regarding physiological mobility impairments no specific duty on the part of the private individual to undergo treatment can be detected in the sources. The questions regarding physiological mobility difficulties tend rather to focus on the specifics of the applicants’ problems when traveling by general public transport, for example troubles getting on and off, sitting down or standing up, or holding on and suchlike. The comprehensive evaluation also has to take into account any problems an applicant may have getting from their residence to the nearest bus stop or entry point. Typically important factors are distance, elevation, road conditions etc. In any case the nature and extent of the applicant’s impairment is not considered relevant, only the extent to which it impedes the applicant’s use of general public transport.947

The circular states that a long walking distance to the nearest stop or point of entry cannot be a factor per se in granting car allowance. An applicant’s travel problems are in these cases described as due to the remoteness of the residence, not to functional impairment on the individual level. However, if the distance between residence and stop is no further than the applicant could be expected to walk if the functional impairment had not existed, long distance may be a factor in the evaluation. The NAV has concluded that the distance a healthy individual can be expected to walk to the nearest stop is about 2 km.948

In one case, for example, a 49-year-old applicant had moderate medical problems which included pain in the neck, arms and shoulders. He could walk a distance of some 2 km. However, the nearest available public transport service was even farther away, making it practically impossible for him to use it. The court stated that his problems were caused by the remoteness of his home and not by his mobility difficulties. Anyone, healthy or not, living so isolated and far away from other people would have trouble using general public transport, and he was refused car allowance.949

The criterion that traveling by general public transport shall be either impossible, or cause such strain of lasting character that it is not reasonable to require it, means that car allowance can be refused on the ground that certain strains are considered reasonable. Even when the applicant’s functional ability is significantly impaired for reasons of health, traveling by public transport may still be considered reasonable. In a case where the 56-year-old applicant was diagnosed with chronic fatigue syndrome, had back

---

947 Circular § 10-7 Letter h, 3 Til § 3.
948 Circular § 10-7 Letter h, 3 Til § 3.
949 TRR 2009-2119.
and neck pains, and also several allergies, including allergies to smoke and perfume, had been bedridden for years but could now walk distances of up to 150 meters, but had a 500-meters uphill climb to the nearest bus stop, it was still considered that he was able to travel by general public transport, even if it caused strains, and car allowance was refused. In another case the applicant was a 47-year-old woman with two club feet and severe problems in her ankles and knees, resulting in considerably impaired walking ability. She could not carry anything, and had problems with pain in her back, knees and shoulders. The medical experts stated that travel by general public transport was an activity she could not perform, and one which posed a risk to her health, as it could accelerate the progress of her disease. The court still did not find her mobility difficulties severe enough to meet the eligibility criteria for car allowance. In another case a 44-year-old applicant diagnosed with hereditary sensory and autonomic neuropathy which both severely affected her ability to walk, and caused sudden and debilitating bouts of pain, and who had a 25-minutes walk to the nearest bus stop, was refused car allowance as she was considered not to have shown severe enough mobility difficulties. Another example is a 57-year-old applicant with asthma and a hip replacement, whose functional ability was described as preventing her from getting on or off a bus. She was not considered to have severe enough mobility difficulties to be granted car allowance.

11.2.8 Four Categories of Need for Transport

Under Section 3 of Executive Regulation 290 the next step for an applicant that has been found to have sufficiently severe and lasting mobility difficulties is to substantiate a real and considerable need for transport that cannot be satisfactorily covered by the applicant’s family, by special transport services for people with disabilities, or in some other fashion, possibly with other forms of public benefits, such as basic benefit for transport or education benefits. The lasting mobility difficulties must be evaluated in the context of the actual communications available at the applicant’s place of residence. As such, under Section 3, the applicant’s need for transport must fall under one of four specific categories of need:

---

950 TRR 2007-1733.
952 TRR 2009-1736.
953 TRR 2010-2297.
954 Circular § 10-7 Letter h, 3 Til § 3.
a) A need to travel to and from a place of work or education

b) A need to travel in order to perform one’s function as a home worker

c) A need to travel to prevent or change the isolation of their existence

d) A need to travel to relieve one’s family in those instances where the impairment leads to a particularly heavy burden of care, and so aid in preventing hospitalization or admission to a health facility or suchlike

The NAV notes that an important aspect of the individual evaluation in category a) is whether the journeys impose such strains that the applicant cannot function properly at work or in the learning situation. There are no specific criteria regarding the type of education that determines eligibility. The education must be of some duration or, if it is short, it must be plausible that the applicant will meet the eligibility criteria for car allowance even after the education is completed.955

Category b) encompasses people with lasting mobility difficulties who are not engaged in salaried work, but who support and aid a spouse or a cohabiting partner who is so employed. The category more or less presupposes that the applicant is living with a family, and is responsible for everyday care work and parenting. The evaluation for this category is something of a triangulation process. The applicant’s household work will be weighed against the work that could be expected from other family members, and this will in turn be weighed against the strains of utilizing public transportation. Special consideration should be given in the comprehensive evaluation to the need to transport children to and from kindergarten or nursery and leisure activities, if the spouse or cohabiting partner has irregular working hours or is otherwise often absent, and if the family already has reasonable transportation available.956

Category c) is a potentially more flexible category than the previous two. The category is technically open to anyone with lasting mobility difficulties and a perceived need to get out and about in Norwegian society. In case law the bar for the need to prevent or change the isolation of their existence has been set very high. For example, people who are not employed are considered more flexible in their everyday lives than working people. In one case the court stated that a person with disability benefits who is retired will be able to flexibly adapt to the circumstances of the day, regarding health, time of travel and means of transport and also be more flexible regarding destination.957

955 Circular § 10-7 Letter h, 3 Til § 3, Bokstav a.
956 Circular § 10-7 Letter h, 3 Til § 3, Bokstav b.
957 TRR 2006-1528. See also for example TRR 2011-962.
Case law has confirmed that a person who is capable of getting on and off public transportation but lives too far away from a station or bus stop to actually use it, is not for that reason alone considered to meet the isolation of their existence criterion.\textsuperscript{958} Conversely, in case law a person who cannot travel by public transport, but who lives in an urban environment with family, friends and social networks relatively nearby has also been considered to not meet the isolation of their existence criterion.\textsuperscript{959}

The risk of isolation of their existence is not treated as an objective criterion. Rather, it appears to be the last resort when no other category of need is met, but the comprehensive evaluation still indicates that access to a car would be strongly beneficial for the private individual. This gives the NAV considerable freedom in defining the circumstances in each individual case that should be considered to meet this category of need. The NAV has concluded that the evaluation allows them the discretionary power to weigh the applicant’s age, family relations, residence, social circumstances and communication possibilities against functional impairment and the relative need for transport in the individual case. According to the NAV it is also important that the applicant cannot use public transport in any fashion, and that the need for transport cannot be otherwise met.\textsuperscript{960}

Though the NAV has wide discretionary powers in determining whether category c) criteria are met, there is no discretion as to whether in fact all relevant circumstances must be considered in the comprehensive evaluation. This follows from Section 15 in the Act on Administrative Appeal to the Social Security Court.\textsuperscript{961} Failure to properly evaluate all circumstances has resulted in case law in the NAV’s decision being overturned and declared invalid.\textsuperscript{962} The Social Security Court has also established vague boundaries for the discretion when deciding whether the applicant’s transport needs can be satisfactorily met by other means. In individual cases the Social Security Court has rejected the comprehensive evaluation and ordered a new one to be made.\textsuperscript{963}

Category d) is the narrowest in scope of the four categories and explicitly covers only one very specific situation. Eligibility under category d) is somewhat different from the other categories as the need relates to the need

\textsuperscript{958} TRR 2008-32.
\textsuperscript{959} See for example LB 2001-2590 and TRR 2010-1525.
\textsuperscript{960} Circular § 10-7 Letter h, 3 Til § 3, Bokstav c.
\textsuperscript{961} Lov 16 desember 1966 nr 9 om anke til Trygderetten.
\textsuperscript{962} LH 2007-179853.
\textsuperscript{963} See for example TRR 2001-2210.
of the disabled person’s immediate family and not that of the disabled person. The medical and all other eligibility criteria must be met as usual, but the actual need for transport is as much about allowing family members to do care work in the home, and so avoid hospitalization etc, as it is about the disabled persons’ need for transport. The NAV notes that a large amount of care work may isolate the entire family due to difficulties in being away from the home to do everyday shopping, go on vacation or otherwise transport the family during leisure time. The comprehensive evaluation shall therefore consider not only the applicant’s need, but also the rest of the family’s possibilities to function normally.  

11.2.9 The Real and Considerable Need for Transport Criterion

Section 3 of Executive Regulation 290 states that the applicant must establish that he or she has a real and considerable need for transport. It is difficult to analyze this particular criterion in isolation from a context as it is inseparable from the applicant’s medical and social circumstances. Yet this eligibility criterion has an independent function in the comprehensive evaluation, as a tool for considering whether the need for transport in the applicant’s everyday life can be met by any other means. Under Section 3 of Executive Regulation 290 car purchase allowance can only be granted if the applicant’s need for transport cannot be met in a satisfactory way by the applicant’s family, by special transport services for people with disabilities or in another way, possibly through basic benefit for transport or any other benefits. The real and considerable need for transport criterion is thus used to ensure that car purchase allowance is always the last resort among the various individual transport measures in the NAV’s arsenal of benefits under the Social Security Act.

The NAV Circular expands on this criterion. The real and considerable need for transport shall be evaluated based on the applicant’s actual situation and how the applicant intends to use the vehicle. The evaluation shall consider every transport need that the applicant states. Typically relevant needs for transport are for example to go shopping, visits to banks and public offices, journeys to family and friends, getting out into the country, activities in various organizations, getting to or from a place for training or exercise and so forth. The future need is also to be considered. The Circular states that a

964 Circular § 10-7 Letter h, 3 Til § 3, Bokstav d.
The NAV remarks that the comprehensive evaluation shall always investigate whether the applicant’s transport needs can be met in any other way, for example by other members of the household, including cohabiting partners, by special transport services for people with disabilities, by residential institutions, regular taxis, or by any combination of these. When evaluating a real and considerable need for transport the NAV may consider the applicant’s age, level of activities, hobbies etc. The Social Security Court has stated that the evaluation of a real and considerable need for transport shall be based in the applicant’s actual everyday circumstances, and that the criterion shall not be understood to imply a particularly extensive need for transport.

Applicants whose need for transport falls under category d) do not have to conform to the same standard for real and considerable need for transport as in categories a), b) and c). The Circular notes that in such cases the comprehensive evaluation shall not focus too narrowly on the actual need for transport, but rather consider that transportation for category d) applicants typically requires a vehicle. Also, for applicants who are employed and are eligible under Chapter 10 Section 5 of the Social Security Act, any difficulties in utilizing general public transport are considered much weightier than for applicants eligible under Chapter 10 Section 6 of the Act.

If the eligible person moves between home and temporary residential facilities, the general rule is that the vehicle shall follow the individual. If the applicant resides permanently, or for long periods of time, in institutions, the need for transport shall be evaluated on the same principles as with any other applicant. All transportation provided by the institution, for example to hospitals or dentists, is typically considered as a need for transport that is already met in a satisfactory way. A real and considerable need for transport in these cases is thus mainly a question of social activities, leisure and visits to friends and family. In case law a young man with various psychological impairments which made it all but impossible for him to travel by general public transport, and who lived in residential accommodation, was granted car purchase allowance based on a real and considerable need for transport.

---

965 Circular § 10-7 Letter h, 3 Til § 3, Reelt og betydelig behov for transport.
966 Circular § 10-7 Letter h, 3 Til § 3, Reelt og betydelig behov for transport.
967 TRR 2007-3534.
968 Circular § 10-7 Letter h, 3 Til § 3, Belastning ved bruk av offentlige transportmidler.
969 Circular § 10-7 Letter h, 3 Til § 3, Reelt og betydelig behov for transport.
970 See for example TRR 2011-1912.
971 Circular § 10-7 Letter h, 3 Til § 3, Medlem bosatt i institusjon eller bolig med heldøgns omsorgstjenester.
mainly to and from his parents’ home.\textsuperscript{972} In another case a young man with physical impairments, who lived more or less temporarily in a residential institution was granted car purchase allowance as the residential institution could not satisfactorily meet his real and considerable need for transport, even though the young man could not drive the vehicle himself.\textsuperscript{973} In a third case another young man with intellectual impairments who lived within walking distance of his unsalaried work, was entitled to the special transport services for people with disabilities and received basic benefit for transport, was not considered to have a real and considerable need for transport.\textsuperscript{974}

Even when in receipt of other benefits and services under the Social Security Act, such as basic benefit for transport and special transport services for people with disabilities, the real and considerable need for transport is not necessarily met. A 46-year-old woman who lived alone, and whose basic benefit for transport covered about three journeys per month, was found to have a real and considerable need for a car to do errands, visit family, and take part in various social activities.\textsuperscript{975}

\textbf{11.2.10 Extraordinary Working Life Eligibility – the Section 4 Exception}

If the eligibility criteria in Chapter 10 Section 5 of the Social Security Act (working life) are met, but the specific eligibility criteria in Section 3 of Executive Regulation 290 are not met, car allowance can still be granted in two special cases. Under Section 4 of Executive Regulation 290 car purchase allowance, benefits for adaptation and equipment of a motor vehicle and benefits for driving instruction can be granted:

\begin{enumerate}
\item when the purchase of a motor vehicle is essential for the person to be able to complete rehabilitation efforts, or
\item when the purchase of a motor vehicle is essential for the person, to be able to accept offered employment.
\end{enumerate}

Rehabilitation in this context generally means an organized effort by an agency with a view to increasing the person’s real possibilities on the labor market. Employment here means salaried work to an extent that is evaluated\textsuperscript{972 TRR 2000-1617.} \textsuperscript{973 TRR 2001-3566.} \textsuperscript{974 TRR 2011-2455.} \textsuperscript{975 TRR 2001-3547.}
in relation to the person’s impairment. The employment shall be expected to last at least two to three years, or, that it will lead in time to another, longer, job. Documentation of both the need for the car in relation to getting to and from rehabilitation or the offered work, and of the need in relation to the medical situation is needed.976

Eligibility under Section 4 is a one-time clause only, that is, it is not possible to use Section 4 for renewal of car allowance to persons who have previously received benefits. It is not possible to receive benefits if the vehicle is to be used in the person’s private business. Also, eligibility for car allowance under Section 4 bars the eligible person from receiving basic benefit for transport for the operation of the vehicle.

The NAV states that when deciding on this exception, crucial importance is to be given to the normative objective behind the rule: to get more people into the workforce.977 Eligibility under Section 4 still requires that the impairment is lasting, that is, will last at least for two years.978 Car purchase allowance under Section 4 will typically be granted under the same conditions as ordinary category 1 car purchase allowance. The NAV notes that if you have a need for a category 2 vehicle, you also typically meet the ordinary eligibility requirements in Section 3 of Executive Regulation 290.979

11.2.11 Who Is Eligible for Category 1 and Category 2 Car Purchase Allowance Respectively?

People meeting the general eligibility criteria for car purchase allowance are granted the allowance for either a category 1 vehicle or a category 2 vehicle. Anyone who is eligible for the allowance, but who does not meet the stricter eligibility criteria for category 2 car purchase allowance, will be granted category 1 car purchase allowance.

Section 2 of Executive Regulation 290 states that car purchase allowance for a category 2 vehicle is granted to three specific categories of eligible persons:

1. persons who are not able to get in or out of the car on their own, without the use of a lift or a ramp,

976 Circular § 10-7 Letter h, 4 Til § 4, "Gjennomføre attføringstiltak eller overta tilbudt arbeid" and Circular § 10-7 Letter h, 4 Til § 4, "Særlege tilfeller".
977 Circular § 10-7 Letter h, 4 Til § 4, Generelt.
978 Circular § 10-7 Letter h, 4 Til § 4, Varighetsvilkåret.
979 Circular § 10-7 Letter h, 4 Til § 4, Gjeldsoppgjør.
2. persons under 18 years of age with severely limited walking ability, and

3. persons over 18 years of age with severely limited walking ability and who need a car of their own to get to and from work or education.

The second category was added in January 2012\textsuperscript{980} and the third category in January 2013\textsuperscript{981}. The background to these additions, was that in 2007 the NAV had decided that the wording in Section 2 of Executive Regulation 290 describing the eligibility for a category 2 vehicle (at that point only the current first category) was exhaustive, and could not be interpreted extensively to include people with serious mobility impairments but who, for example, did not specifically need a lift or ramp to either get in or out of the vehicle. This very narrow interpretation was upheld by the Supreme Court under appeal.\textsuperscript{982}

The Social Security Court has in turn stated that this final verdict of the Supreme Court cannot be understood to mean that the wording in Section 2 of Executive Regulation 290 shall be interpreted narrowly rather than extensively in any circumstance. The final verdict of the Supreme Court shall rather be understood to mean that an individual right under the Social Security Act can never be limited by Executive Regulation. On the basis of the final verdict of the Supreme Court, the Social Security Court established the important principle that a person eligible for car purchase allowance, and for whom no category 1 vehicle can be considered appropriate, is therefore by default eligible for a category 2 vehicle, more or less regardless of the wording in the Executive Regulation.\textsuperscript{983}

The NAV writes that the criterion severely limited walking ability should also be interpreted in a literal and narrow manner, and that it should be understood as pertaining mainly to physical impairments. Another consequence of this literal interpretation of framework law is that the NAV stresses that, when deciding whether to grant car purchase allowance for either a category 1 or 2 vehicle, the only need that is legitimate is the need to be able to use the vehicle for the purpose it is granted. For example, if someone is eligible for car purchase allowance in order to get to and from work, and has a need for a category 2 vehicle to get outdoors during leisure time or while on vacation, but a category 1 vehicle suffices to get to or from work, then only a category 1 vehicle will be granted. On the other hand, the evaluation must

\textsuperscript{980} Forskrift 22 desember 2011 nr 1489 om endring i forskrift om stønad til motorkjøretøy eller annet transportmiddel.

\textsuperscript{981} Forskrift 17 desember 2012 nr 1275 om endring i forskrift om stønad til motorkjøretøy eller annet transportmiddel.

\textsuperscript{982} Case HR 2010-1533-A. For a comprehensive discussion on the final verdict of the Supreme Court and the verdicts of the lower courts, see Spidsberg 2011.

\textsuperscript{983} TRR 2010-173.
strive to make the eligible person as self-reliant as possible. Should a person, within the legitimate need, need support and assistance to manage in a category 1 vehicle, but can be independent in a category 2 vehicle, this is a reason for granting a category 2 vehicle.984

11.2.12 Who Is Eligible for Benefits for Adaptation and Equipment of a Motor Vehicle?

A person who, due to disease, injury or infirmity cannot use a motor vehicle without the installation of special equipment or adaptation can, under Section 11 of Executive Regulation 290, be granted benefits for adaptation and equipment of a motor vehicle. It is not necessary for the applicant to also be eligible for car purchase allowance to be granted benefits. The benefits for adaptation and equipment of a motor vehicle cover all necessary costs and are not means-tested. These benefits do not cover equipment that can be delivered as standard from the manufacturer nor, for category 2 vehicles, do they cover the removal of such standard equipment. For category 1 vehicles, the benefits are limited to the most reasonable and appropriate solution, and for category 2 vehicles to the actual cost of special equipment and adaptation of a procured vehicle. Under Section 11 benefits for adaptation and equipment of a motor vehicle can be granted only once per vehicle. However, exceptions are possible if the eligible person’s health condition so changes that the adaptation or equipment is no longer appropriate, or if the equipment becomes worn out.

The NAV itself procures special equipment and installation services, and benefits can only be granted to pay for such procured equipment. Only in cases when the procured equipment is not appropriate for the eligible individual, or in extraordinary cases, can an exception be made.985

For eligibility, the special equipment or adaptation must be necessary and appropriate in relation to the impairment for which benefits are granted. In case law a 45-year-old man with no legs was granted benefits for a sliding door and special steps so that he could use the car for everyday tasks with the entire family, including driving his infant daughter.986 In another case a tow bar was considered appropriate, but not necessary, and the benefit was thus

---

984 Circular § 10-7 Letter h, 2 Til § 2, Definisjoner.
985 Circular § 10-7 Letter h, 11 Til § 11 – Tilskudd til spesialutstyr og ombygging, Felles for gruppe 1 bil og gruppe 2 bil.
986 TRR 2011-2628.
refused. To refit a vehicle to make it possible to stay in it overnight, as in a caravan, was likewise considered appropriate, but not necessary, and the benefit was refused. Other examples include children being granted category 2 car purchase allowance, and the families sometimes needing more seats than the standard number to be installed in the vehicle, for instance to make it possible for the entire family to travel together. In such cases benefits have been refused on the grounds that such adaptations are not necessary in relation to the disabled child’s impairment.

For persons eligible for category 2 car purchase allowance, the eligibility for benefits for adaptation and equipment of a motor vehicle can be affected by the normative objective of the particular set of eligibility criteria under which they are granted car purchase allowance. As described above, in Chapter 10 Section 5 of the Social Security Act the normative objective is to increase functional ability in working life, while in Chapter 10 Section 6 of the Act the normative objective is to increase functional ability in everyday life. Typically, eligibility for car purchase allowance under Section 5 (working life) gives a better chance of being granted benefits for adaptation and equipment of a motor vehicle for special needs, than eligibility under Section 6 (everyday life); especially so, when the purpose of eligibility under Section 6 of the Act is specified as preventing or changing the isolation of their existence under letter c) of Section 3 of Executive Regulation 290. For example, the Norwegian countryside is rocky and mountainous in many places, and this prompts applications for benefits to install all-wheel drive, AWD, in vehicles. In cases where the applicants have been granted car purchase allowance under Section 6 (everyday life) to prevent or change the isolation of their existence, and where AWD probably would have made the vehicles more useful for the applicants in their everyday lives, the aim of preventing or changing the isolation of their existence was considered to have been met without AWD, as the vehicles could be used, albeit probably not to the full extent possible, by the applicants in their everyday lives.

The NAV states that benefits for adaptation and equipment of a motor vehicle, as a rule, are not granted for AWD, but when exceptions are made, they would primarily be for persons who need the vehicle in everyday life to get to and from work, education or rehabilitation. Exceptions for persons who need the vehicle to prevent or change the isolation of their existence would be

987 TRR 2011-2365.
988 TRR 2011-1366.
extraordinary.\footnote{Circular § 10–7 Letter h, 11 Til § 11 – Tilskudd til spesialutstyr og ombygging, For bil i gruppe 2.} In one case, where AWD was refused, the exception was described as pertaining to places which are particularly exposed to weather conditions and where accessibility was impeded for long periods at a time.\footnote{TRR 2011-405.} In case law where exceptions have been granted, another important factor is the need for the eligible person to be able to travel easily and securely.\footnote{TRR 2003-5297. See also for example TRR 2010-2317.} For example, in one case a woman in her thirties, eligible for category 2 car purchase allowance under Chapter 10 Section 6 of the Act, and to prevent or change the isolation of their existence, was granted benefits for AWD as it was considered very important for her to be able to visit her remotely domiciled family in an easy and secure manner.\footnote{TRR 2012-1814.}

Under Section 14 of Executive Regulation 290 benefits can be granted, without any means-testing, for repairs of adaptations and special equipment when necessary. Likewise benefits are granted to cover any costs for periodic checks of equipment. There is no right to benefits for repair costs for any category 1 or category 2 vehicle as such. Outside the scope of basic benefit for transport no benefits are granted for the running or maintenance of the vehicle.\footnote{See also LA 2003-1518.}

\subsection*{11.2.13 Who Is Eligible for Benefits for Driving Instruction?}

Under Section 12 of Executive Regulation 290 benefits for driving instruction are granted if the person needs it and is already eligible for car purchase allowance. Benefits for driving instruction are means-tested, and are calculated using the same percentages and cut-off points as the loans and grants for car purchase allowance, under Section 9 of Executive Regulation 290. Any costs for a driver’s license review are, however, fully covered and not means-tested. Section 12 also states, that if special installations, and subsequent uninstallations, are necessary in the vehicle for a driving instructor, and the instruction for special reasons has to take place in the student’s own vehicle, when considered appropriate and reasonable, all such costs are to be fully covered and not means-tested.

Eligibility for benefits for driving instruction is transferable, that is, if the eligible person cannot drive the vehicle and some other person can, for
example a spouse or cohabiting partner, or a parent of an eligible child, the designated driver can receive the benefits for the necessary instruction.  

Eligibility for car purchase allowance under Chapter 10 Section 6 of the Social Security Act (everyday life) includes the requirement that all benefits shall be necessary and appropriate. A prerequisite for car purchase allowance being deemed appropriate may be that the eligible person can actually use the vehicle, for example by qualifying for a driver’s license in order to be able to drive the vehicle. The NAV Circular states that, when car purchase allowance and benefits for driving instruction are granted, it is important to clarify as soon as possible whether it is probable that the person will qualify for a driver’s license. For example, if there are problems or impairments relating to language the NAV might require that the theory test is taken before a vehicle is purchased. With certain diagnoses, where the risks of cognitive problems are higher, the NAV will typically require a neuropsychological evaluation before the purchase of a vehicle, etc. If it seems probable that the otherwise eligible person will not qualify for a driver’s license, all benefits will be frozen.

11.3 Impact of Funding on the Right to Car Allowance

Section 9 of Executive Regulation 290 states that category 1 car purchase allowance is a means-tested cash benefit. Category 2 car purchase allowance is granted as an interest- and installment-free loan, which is partially means-tested. Under Section 6 of Executive Regulation 290 all car purchase allowance benefits are granted within a set amount determined by the Norwegian Ministry of Labor and Social Inclusion.

The means-tested cash benefit for category 1, and the means-tested loan for category 2, are granted to persons with an annual income of no more than six times the social security basic amount (SSBA). The SSBA for 2013 was NOK 84 204 and so the cut-off point was NOK 505 224 in annual income before deductions and additions. The annual income is defined in Section 9 of Executive Regulation 290 as the applicant’s annual taxable income before deductions. The latest tax returns shall be used unless they clearly give a false

---

996 Circular § 10-7 Letter h, 12 Til § 12 – Kjøreopplæring.
997 TRR 2009-726.
998 Circular § 10-7 Letter h, 12 Til § 12 – Kjøreopplæring.
999 Folketrygdens grunnbeløp.
1000 Statistisk sentralbyrå – Statistics Norway (website).
impression about the applicant’s income. In cases when the applicant is a child under 18 years of age, the annual income of the child’s main provider will be used.

Under Section 9 deductions to the annual income are made by one quarter of the SSBA per person in cases when the eligible person is supporting children under 18 years of age or a spouse. If the applicant is living with a spouse who has an income larger than one SSBA, the spouse’s income above that limit is added to the applicant’s. For the means-tested category 2 loan, if the spouse has a car that it is necessary to keep, in addition to the category 2 vehicle, for example because the spouse needs the car for work, only half of the spouse’s income above one SSBA shall be added to the applicant’s. For the means-tested category 1 benefit, if the application concerns other means of transport than a car, only the applicant’s annual income is used.

The means-tested category 1 cash benefit is granted as a percentage of the amount of the car allowance for category 1 vehicles; in 2013 this was NOK 147 980.\textsuperscript{1001} The means-tested loan for category 2 is likewise granted as a percentage of the amount of car allowance for category 2 vehicles; in 2013 this was NOK 150 000.\textsuperscript{1002}

\textsuperscript{1001} NAV Transport gruppe 1 (website).
\textsuperscript{1002} NAV Transport gruppe 2 (website).
Under Section 9 of Executive Regulation 290 the category 1 means-tested cash benefit and the category 2 means-tested loan are granted as follows:

<table>
<thead>
<tr>
<th>Annual income with all deductions and additions</th>
<th>Percentage of category 1 or category 2 car allowance amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 3 SSBA</td>
<td>100%</td>
</tr>
<tr>
<td>3 – 3½ SSBA</td>
<td>80%</td>
</tr>
<tr>
<td>3½ – 4 SSBA</td>
<td>70%</td>
</tr>
<tr>
<td>4 – 4½ SSBA</td>
<td>60%</td>
</tr>
<tr>
<td>4½ – 5 SSBA</td>
<td>50%</td>
</tr>
<tr>
<td>5 – 5½ SSBA</td>
<td>40%</td>
</tr>
<tr>
<td>5½ – 6 SSBA</td>
<td>20%</td>
</tr>
</tbody>
</table>

The entire cash benefit for category 1 car purchase allowance is the amount calculated above. The rest of the purchase price for the car has to be paid privately by the applicant. For category 2 car purchase allowance, any difference between the means-tested benefit and the purchase price is covered by non-means-tested benefits. The means-tested interest and installment-free loan is the amount calculated above. Any part of the price for the category 2 vehicle that is above the category 2 car allowance amount will be covered by the non-means-tested benefits. For example, if the applicant has an annual income above 6 SSBA and the category 2 vehicle costs NOK 250 000, the applicant would receive a non-means-tested loan up to the category 2 car allowance amount (NOK 150 000 in 2013) and would receive NOK 100 000 in non means-tested interest- and installment-free loan to cover the price difference between the purchase price and the category 2 car allowance amount.
11.3.1 Impact of Funding on the Right to Renewal of Car Purchase Allowance

When Executive Regulation 290 came into force in 2003, the rules for renewal of car purchase allowance differentiated between renewals for people eligible under Chapter 10 Section 5 (working life) and Chapter 10 Section 6 (everyday life), respectively, of the Social Security Act. Section 8 of Executive Regulation 290 determines when eligible persons can receive renewed car purchase allowance.

Persons eligible for either category 1 or 2 car purchase allowance under Chapter 10 Section 5 of the Act can reapply for, and be granted, the allowance when the original vehicle has been in use for eight years. For category 2 vehicles the eight-year period is counted from the day the vehicle is first registered, regardless of when the person applying for renewal actually took possession of it. For category 2 vehicles there is also the additional prerequisite for renewal, that the vehicle must have been driven for at least 150 000 km.

The 150 000 km additional rule originally applied to both category 1 and 2 vehicles, from 2003 to July 2012. This created absurd “Catch 22” consequences for individuals. For example, in one case from 2009, a man had bought a regular used private car first registered in 2000 or 2001 with his own funds in 2004. He then had to amputate his right foot in 2008, which meant he could no longer use his car. Because of the impairment and his personal circumstances he was found eligible for car purchase allowance under Chapter 10 Section 5 of the Social Security Act and Section 3 of Executive Regulation 290. However, he did not meet the criteria for renewal as his old private car – which he could not use – had not gone 150 000 km. The car was by then eight years old, but it had not run 150 000 km, and – since he could not use the car – probably never would run another km. He was refused car purchase allowance.

Persons eligible for either category 1 or 2 car purchase allowance under Chapter 10 Section 6 of the Act can reapply for, and be granted, the allowance when the original vehicle has been in use for eleven years. For category 2 vehicles the eleven-year period is counted from the day the vehicle was first registered, regardless of when the person applying for renewal actually took possession of it.

---

1003 Forskrift 27 juni 2012 nr 696 om endring i forskrift om stønad til motorkjøretøy eller annet transportmiddel.
1004 TRR 2009-1428.
For category 2 car purchase allowance, exceptions from the eight- or eleven-year rules, that is earlier renewals, can be made if necessitated by changes in the applicant’s health. For category 1 car purchase allowance, earlier renewal can only be granted when the applicant meets the eligibility criteria for category 2 car purchase allowance at the time of application for renewal.

That a new vehicle would be more appropriate, or better meet the applicant’s needs, is not in itself sufficient grounds to grant renewal. As long as the old vehicle meets the person’s need for transport, case law shows that there is no right to renewal before the eight or eleven years. In one case a man in his late thirties experienced a significant change for the better in his health condition. He therefore wanted to change his old category 2 vehicle for a more appropriate category 1 vehicle, well before eleven years. The court stated that the rules for renewal were mainly to protect the public budget from excessive costs. The court noted in the case that, while early renewal was a cost, the change from a more expensive category 2 vehicle to a cheaper category 1 vehicle would reduce that cost. The actual costs for either alternative were not made clear, and therefore the cost argument would not motivate a refusal of renewal. In this particular case the applicant was granted early renewal. However, the case illustrates the importance of economic arguments, and the weight public budget interests have in the courts, in relation to the individual right to appropriate transportation in everyday life.

The NAV Circular mentions two other exceptions which are not regulated in Executive Regulation 290. When a child has been granted car purchase allowance, earlier renewal can be granted when the child turns 18 years of age, making it possible for them to drive. This exception is only applicable when it is considered a more reasonable and appropriate solution than adapting and equipping the existing vehicle. The other exception is when a category 2 vehicle totally breaks down. When this happen the vehicle can be replaced without any means-testing or cost to the eligible person.

For category 1 car purchase allowance granted for other means of transport which are not cars, the eight- or eleven-years rule does not apply. Instead the vehicles are replaced when it is considered necessary because they are no longer appropriate.

---

1005 LB 2002-626.
1006 LG 2005-140297.
1007 Circular § 10-7 Letter h, 8 Til § 8 – Vilkår for gjenanskaffelse, Til andre ledd.
1008 Circular § 10-7 Letter h, 8 Til § 8 – Vilkår for gjenanskaffelse, Til fjerde ledd.
The rules for renewal are to be understood to supplement the ordinary eligibility criteria and evaluation process. An application for renewal of car purchase allowance is therefore as such not very different from any application for car purchase allowance. A comprehensive evaluation is made to ensure that the eligibility criteria of Chapter 10 of the Social Security Act and Section 3 of Executive Regulation 290 are still met. In case law, however, the Social Security Court has laid down the principle that a renewed comprehensive evaluation must be in reasonable compliance with earlier evaluations. When the applicant’s health and impairment has not improved since the last evaluation, a renewed evaluation should not refuse car purchase allowance in cases of renewal, simply because of a different interpretation of the eligibility criteria.\textsuperscript{1009} This principle of legal predictability has been upheld and confirmed in several cases brought before the court.\textsuperscript{1010}

It is possible that an application for car purchase allowance will be treated under the rules for renewal, even in cases when the person is a first-time applicant, and has not applied for, or received, car purchase allowance before. Under Section 8 of Executive Regulation 290 the conditions for renewal are applicable even if the person’s existing vehicle is entirely privately bought, owned and paid for. The NAV states that when the applicant has a private car that is less than eleven years old at the time of application, an evaluation of the individual’s circumstances shall take place. Even if the existing private car is faulty or inappropriate for the person, the applicant must still heed the rules for renewal.\textsuperscript{1011}

\textit{11.3.2 Debt Settlement of Car Purchase Allowance}

Under Section 15 of Executive Regulation 290 all car purchase allowance shall be settled when the person ceases to be eligible, is granted renewal of car purchase allowance, sells the vehicle, or dies. For category 1 vehicles, the cash benefit is written off at $1/22$ every six months, so that after eleven years the entire sum is written off. In cases when renewal is granted after eight years, the remainder is written off at the time of renewal. If the debt is settled before the entire sum is written off, the remainder shall be paid to the NAV.

\textsuperscript{1009} TRR 2003-2660.
\textsuperscript{1011} Circular § 10-7 Letter h, 8 Til § 8 – Vilkår for gjenanskaffelse, Generelt.
For category 2 vehicles debt settlement under Section 15 is simply the return of the vehicle to the NAV. If the vehicle is not suitable for reassignment, the remaining value of the vehicle can be paid to the NAV instead of returning the vehicle. If the value of the vehicle is less than the remainder of the debt, that remainder shall be written off. However, if the value of the vehicle is reduced due to lack of service, repairs or maintenance, which according to the written debt instrument the eligible person is responsible for, the NAV might require the person to pay the remainder in cash. Reasonable consideration shall be given to the impact of the person’s impairment on their possibilities of fulfilling the duties in the written debt instrument.

Settlement of benefits for adaptation and equipment of a motor vehicle under Section 15 is achieved simply by returning the special equipment to the NAV, if the equipment is appropriate for reuse.

11.4 Who Is Obliged to Provide Car Allowance?

The NAV’s obligation to provide category 1 car purchase allowance directly to the seller, and never to the eligible person, is straightforward under Section 10 of Executive Regulation 290. It makes no difference whether the seller is a car dealership or a private person.\textsuperscript{1012} The NAV’s obligation to provide category 2 car purchase allowance is mainly regulated by Section 6 of Executive Regulation 290. The NAV procures vehicles from car dealers or importers and then passes on the actual vehicles to those who are eligible to receive them. The NAV’s obligation to provide benefits for adaptation and equipment of a motor vehicle is regulated by Section 11 of Executive Regulation 290 and is similar to category 2 car purchase allowance. The NAV procures special equipment from various sellers and workshops, who in turn provide the equipment and installation to the eligible person.\textsuperscript{1013} When evaluating special equipment or adaptations, the local NAV office shall consult with NAV Assistive Technology.\textsuperscript{1014} The NAV is obliged to provide benefits for driving instruction under Section 12 of Executive Regulation 290. The instruction takes place at regular driving schools. There is no driving instruction procurement, but the NAV has a say in which school is used, and the Circular states that driving schools where the staff have taken the special

\textsuperscript{1012} Circular § 10–7 Letter h, 10 Til § 10 – Utbetaling av stønad.
\textsuperscript{1013} Circular § 10–7 Letter h, 11 Til § 11 – Tilskudd til spesialutstyr og ombygging, Felles for gruppe 1 bil og gruppe 2 bil.
\textsuperscript{1014} Circular § 10–7 Letter h, 11 Til § 11 – Tilskudd til spesialutstyr og ombygging, For bil i gruppe 2.
courses given by the Nord-Trøndelag University College are to be preferred.\textsuperscript{1015}

### 11.5 Legal Guarantees for Entitlement to Car Allowance

Under Chapter 21 Section 6 of the Social Security Act, car allowance is considered an ongoing form of benefit. Under that Section, a decision to grant car allowance can be reversed or changed, if there is a change in the person’s eligibility. For example, persons eligible under Chapter 10 Section 5 of the Act who leave the work force will no longer be eligible, and a new comprehensive evaluation will be made under the eligibility criteria in Chapter 10 Section 6.\textsuperscript{1016} Depending on the circumstances and the evaluation this could lead to the person losing all or some of the benefits. In this respect the individual legal right to car allowance is weak, as a change in health or living conditions or losing a job, can potentially mean losing car allowance partially or completely.

The applicant whose application for car allowance is refused by the NAV has a right to administrative appeal. Under Chapter 21 Section 12 of the Social Security Act, a decision can first be appealed to the authority decided by the NAV. That authority will be NAV Appeals\textsuperscript{1017}, a department within the NAV, created under Section 5 of the NAV Act\textsuperscript{1018}. NAV Appeals has the authority to retry the decision in its entirety. If the decision is not overturned in the applicant’s favor it can be further appealed, under Chapter 21 Section 12 of the Social Security Act, to the Social Security Court, operating under the rules in the Act on Administrative Appeal to the Social Security Court\textsuperscript{1019}. The Social Security Court has complete discretion over the decision under Sections 15 and 20 of the Act on Administrative Appeal to the Social Security Court. The final verdict of the Social Security Court is the final administrative verdict available to the private individual. Administrative appeal can be lodged for every part of a decision. In this particular respect the private individual’s legal right to car allowance is quite strong.

If the Social Security Court’s final verdict is not in the applicant’s favor, the applicant can appeal the decision to the regular courts. Under Section 23 of the Act on Administrative Appeal to the Social Security Court, the regular

\textsuperscript{1015} Circular § 10-7 Letter h, 12 Til § 12 – Kjøreopplæring.
\textsuperscript{1016} Circular § 10-7 Letter h, 8 Til § 8 – Vilkår for gjenankjøp, Til tredje ledd.
\textsuperscript{1017} NAV Klageinstans.
\textsuperscript{1018} Lov 16 juni 2006 nr 20 om arbeids- og velferdsforvaltningen.
\textsuperscript{1019} Lov 16 desember 1966 nr 9 om anke til Trygderetten.
courts can rule on the legality of the final verdict of the Social Security Court. Such an appeal is not administrative, but will be handled as a civil law suit between the individual and the government, where the main question will be whether the earlier decisions and verdicts are legally correct. Under Chapter 21 Section 12 of the Social Security Act, appeal to the regular courts is only possible if the process of administrative appeal has been completely exhausted, that is, the Social Security Court must have ruled in the matter.
PART IV – Cash Benefits for Transport for People with Disabilities
12 The Law Governing Cash Benefits for Transport in Denmark and Norway – Emergence and Development

In both Denmark and Norway statutory regulated cash benefits for transport are important parts of the strategies for meeting transport needs in the everyday lives of people with disabilities. In Sweden a statutory right to cash benefits also exists but that right is of very little importance or consequence for the transport needs in the everyday lives of people with disabilities. The Swedish cash benefit is for that reason not a part of this study. The Swedish right to cash benefits for people with disabilities is found in Chapter 50 of the Social Security Act. Richard Sahlin has written a thorough study of the general Swedish right to cash benefits for people with disabilities, including the limited scope of the cash benefit for transport.

12.1 Cash Benefits for Transport for People with Disabilities in Denmark – Municipal Reimbursements for Inaccessible General Public Transport

In Denmark, cash benefits for transport for people with disabilities currently come in three different regulated forms by statute:

- Coverage of necessary additional expenses for transport is a benefit in the form of cash payment from the municipality to the eligible person, with the normative objective of covering additional expenses for individual transport, which are considered due to lasting physical or psychological impairment. Coverage of necessary additional expenses for transport is always an integrated part of the benefit coverage of necessary additional expenses which also includes expenses for other things than transport.

- Contribution for travel by individual means of transport is a benefit paid by the municipality to the eligible person; both the normative objective and the forms of the benefit are subject to extensive municipal discretion.

- Escort for travel is a benefit primarily in kind, where the normative objective is to aid those who cannot travel by general public transport on their own. The

---

1022 “Dækning af nødvendige merudgifter” in Danish.
benefit in kind consists of the municipality granting the eligible person an escort when traveling by general public transport.

When the Social Welfare Act\textsuperscript{1023} came into force in April 1962 the old system of municipal aid, special aid and poverty aid was abolished, and a modern system of public welfare was introduced. In Sections 70 and 73 of the Act certain provisions were made for covering necessary extra expenses caused by lasting impairments. The benefit was a cash benefit from the municipality to the eligible person. When the Social Benefits Act\textsuperscript{1024} came into force in October 1976 these provisions were carried forward in Section 48 of the new Act. The benefit continued to be a municipal responsibility and Section 48 encompassed two categories of people eligible for coverage of necessary extra expenses:

- persons who, in the home, provide for children under 18 years of age with a continuous physical or psychological disorder, and

- persons who, in their own home, are under the supervision of certain institutions for receiving handicap care.

The benefit was not means-tested. According to the national government the first group encompassed those children whose lasting impairment caused extra expenses. The second group encompassed those adults who were formally enrolled at care institutions but were residing in their own homes.\textsuperscript{1025} The government circular stated that necessary extra expenses should be understood to mean costs above and beyond the costs an eligible person would have had, was it not for the impairment. Important factors in evaluating whether a cost was a necessary extra expense, were what the family could be expected to provide, employment conditions, age etc. In any case the costs must be a consequence of the impairment.\textsuperscript{1026} Examples of transport costs that could be considered necessary extra expenses were costs for traveling to and from school or education and costs for accompanying a child for treatment. If the impairment caused such problems that the child could not use general public transport, coverage of necessary extra leisure expenses could be granted. Such extra expenses should normally only be covered up to the lowest rate of the national tax reimbursement rules, corresponding to driving 400 km in a car of one’s own.\textsuperscript{1027}

\textsuperscript{1023} Lov nr 169 af 31/05/1961 om offentlig forsorg.
\textsuperscript{1024} Lov nr 333 af 19/06/1974 om socialt bistand.
\textsuperscript{1026} Circular 1975-11-03 on Cash Benefits under the Social Benefits Act, 53.
\textsuperscript{1027} Circular 1975-11-03 on Cash Benefits under the Social Benefits Act, 54.
During the 1980s changes took place in Section 48 of the Social Benefits Act. In 1981 coverage of necessary extra expenses became means-tested for the first eligibility category – children and their parents.\textsuperscript{1028} The benefit for the second eligibility category – adults – however, was never means-tested. The change caused debate among Danish legal scholars, and the means-testing was considered to break the fundamental principles underpinning the Social Benefits Act.\textsuperscript{1029}

By 1987 coverage of necessary extra expenses had taken the final form which the benefit would retain for ten more years.\textsuperscript{1030} The benefit was no longer means-tested as a general rule, but the first eligibility category now had a limit, with certain exceptions. Under Section 48 persons who, in the home, provided for a child under 18 years of age with a physical or psychological handicap, had the right to coverage of necessary extra expenses incurred in providing for the child, insofar as the necessary extra expenses were due to the handicap and amounted to more than DKK 2 400 per annum. The DKK 2 400 limit was, however, not applicable to those who provided for a child with an extensive handicap, a child with a chronic disease or to those who did not have the means to pay for the necessary extra expenses. Means-testing was thus in force for this third category of exceptions to the main rule.

Further, under Section 48 of the Act, persons with an extensive physical or psychological handicap, residing in a home of their own, had the right to coverage of any necessary extra expenses incurred in providing for themselves, insofar as the necessary extra expenses were due to the handicap. For this eligibility category there was no minimum amount.

When the Social Benefits Act came into effect in 1976, Section 61 of the Act stipulated that the municipalities could grant benefits for travel by general public transport, and, when health conditions so indicated, for travel by an individual means of transport to those who received disability pension, or old age pension, or were women over 55 years of age who received a widow’s pension. The government noted that the benefit was specifically targeted towards elderly people, and that a government committee was considering transport solutions for those with mobility impairments.\textsuperscript{1031}

\textsuperscript{1028} Lov af 16/06/1980 om ændring af lov om social bistand.
\textsuperscript{1029} Varmer 1982.
\textsuperscript{1030} Bekendtgørelse nr 830 af 03/12/1986 af lov om social bistand.
\textsuperscript{1031} LFF 1973 Government’s Remarks on Proposal on Social Benefits Act, Til kapitel 13, Til § 61.
In July 1998 the Social Benefits Act was abolished as the new Social Services Act\textsuperscript{1032} came into force. Under Section 84 of the new Act, the municipalities were tasked with providing coverage of necessary additional expenses, including those for transport, for those with an extensive and lasting physical or psychological impairment, insofar as the expenses were due to the impairment. Those who received an old age pension under the Social Pension Act\textsuperscript{1033} were not eligible for benefits, unless they were also granted benefits under Section 77 of the new Social Services Act, that is, benefits for support and services in everyday life granted to those with major lasting physical or psychological impairments and who also had special needs. The earlier division into two categories of eligibility with one category for children and their parents and another for adults living on their own, was discontinued. The national government noted, however, that despite this conflation no major change in eligibility was intended.\textsuperscript{1034}

In January 2003 the extensive and lasting physical or psychological impairment eligibility criterion was changed, as “extensive” was dropped and the remaining eligibility criterion became lasting physical or psychological impairment.\textsuperscript{1035}

A new benefit, contribution for travel by individual means of transport, was introduced under Section 103 of the new Social Services Act. According to the government, the new benefit was intended to correspond and continue the benefits paid under Section 61 of the abolished Social Benefits Act.\textsuperscript{1036} Section 103 of the new Social Services Act stated that the municipality could grant contribution for travel by individual means of transport to those who, due to a lasting physical or psychological impairment, needed to travel by an individual means of transport. Section 103 also stated that a municipal decision on this benefit could not be taken to administrative appeal. The government stated that the municipalities had full discretion concerning the issuing of guidelines for payment of the benefit.\textsuperscript{1037}

Another new benefit, escort for travel, was introduced in the Social Services Act for adults up to 67 years of age, under Section 78 of the Act, and for young

\begin{itemize}
  \item \textsuperscript{1032}Lov nr 454 af 10/06/1997 om social service.
  \item \textsuperscript{1033}Bekendtgørelse nr 612 af 24/06/1996 af lov om social pension.
  \item \textsuperscript{1034}LFF 1997-04-16 nr 229, Bemærknings til de enkelte bestemmelser, Til kapitel 15 Dækning af nødvendige merudgifter, Til § 82.
  \item \textsuperscript{1035}Lov nr 285 af 25/04/2001 om ændring af lov om social pension og andre love. See also LFF 2000-12-15 nr 137.
  \item \textsuperscript{1036}LFF 1997-04-16 nr 229, Bemærknings til de enkelte bestemmelser, Til kapitel 19 Hjælpenidler, boligindretning og befordring, Til § 101.
  \item \textsuperscript{1037}LFF 1997-04-16 nr 229, Bemærknings til de enkelte bestemmelser, Til kapitel 19 Hjælpenidler, boligindretning og befordring, Til § 101.
\end{itemize}
people between the ages of 16 and 18 years, under Section 31. Those who could not travel alone due to a lasting physical or psychological impairment were eligible. The benefit was limited to 15 hours per month. The government made a distinction between people with psychological impairments, who were eligible, and those with social impairments, who were not. Social impairments should be understood as encompassing, for example, those with mental illnesses or drug abuse problems and suchlike.

During the editing and consolidating process of the Social Services Act in 2005 the sections were renumbered. Section 84 concerning coverage of necessary additional expenses in everyday life, including coverage of necessary additional expenses for transport, was renumbered Section 100. Section 103 concerning contribution for travel by individual means of transport was renumbered Section 117. Section 78, concerning escort for travel for adults was renumbered Section 97, and Section 31, concerning escort for travel for young people age 16 to 18 years, was renumbered Section 45.

12.2 Basic Benefit for Transport for People with Disabilities in Norway – Compensation in Everyday Life

Basic benefit for transport is a cash benefit paid by the national government to the eligible individual, with the normative objective of covering extra expenses for transport, including the cost of operating a vehicle bought with car allowance, incurred by the impairment. Basic benefit for transport is part of the basic benefit, a cash benefit covering several kinds of extra costs that are considered to be a result of the impairment or disability.

The Act on Handicap Support came into force in 1961. The national government stated that the ambition was to create a three-tiered support system for disabled people, with one benefit to compensate for loss of income from work, a second benefit to compensate for the extra expenses that many disabled persons have in their everyday lives, and a third benefit for the extra costs for care. The three different benefits were to be needs-based, and could

---

1038 LFF 1997-04-16 nr 229, Bemærkninger til de enkelte bestemmelser, Til kapitel 14 Personlig hjælp, omsorg og pleje m. v., Til § 76.
1039 Lov nr 573 af 24/06/2005 om social service.
1040 “Grunnstønad til transport, herunder drift av medlemmets bil” in Norwegian.
1041 “Grunnstønad” in Norwegian.
1042 Lov 22 januar 1960 nr 1 om uføretrygd.
be granted independently of each other.\textsuperscript{1043} The benefit aimed at compensating for extra expenses was to be named basic benefit. The government noted that disabled persons often have special economic burdens caused by extra expenses, which in turn are caused by the consequences of the impairment. One such economic burden affected disabled people who could not use regular means of transport but were dependent on the use of taxis or their own private cars.\textsuperscript{1044}

From the beginning the benefit was not means-tested and came as one predetermined sum. Only transport costs incurred by either work or education were eligible as extra expenses. Under Section 3 of the Act on Handicap Support the basic benefit was NOK 600 per year, which in special cases could be increased to NOK 900 per year. Section 3 also required that the handicap caused significant extra costs. Under Section 2 of the Act, the eligibility criteria required a person to have completed a course of appropriate treatment, and afterwards show serious and lasting, objectively registerable, symptoms of disease, injury or infirmity. To qualify for basic benefit the person needed to meet the criteria, after 15 years but before 70 years of age, under Section 7 of the Act.

The national government stated that eligibility required a medical condition, and that the basic benefit was intended to ease the consequences of the medical handicap. Specific examples of people not to be eligible were given: those who abused alcohol or narcotics; criminal or psychopathic people; people who would not adjust to normal, regular work.\textsuperscript{1045} The basic benefit was for well-behaved citizens only. That the medical condition had to be serious, lasting and objectively registerable made the medical evaluation very important in deciding eligibility. The government considered that the combination of the eligibility criterion in Section 3, that the handicap caused significant extra costs, and the medical criteria in Section 2 would ensure that only deserving people received the benefit.\textsuperscript{1046}

The basic benefit was incorporated into Chapter 8 of the Social Security Act of 1966, which came into force in 1967, at which time the Act on Handicap Support expired. The eligibility criteria in Chapter 8 Section 2 of the Social Security Act required a person to have completed an appropriate course of treatment, and afterwards to have a lasting disease, injury or infirmity. Although some of the medical conditions in the eligibility criteria of the old

\textsuperscript{1043} Ot prp nr 22 (1959), p 4.
\textsuperscript{1044} Ot prp nr 22 (1959), p 16.
\textsuperscript{1045} Ot prp nr 22 (1959), p 11.
\textsuperscript{1046} Ot prp nr 22 (1959), p 12.
Act on Handicap Support were removed, the government intended there to be no material change in the scope of eligibility.\textsuperscript{1047}

In the Social Security Act of 1966 the basic benefit was constructed differently. Instead of a predetermined sum, the benefit now came as a predetermined percentage of the social security basic amount (SSBA). Under Chapter 8 Section 2 Letter a) of the Act, the basic benefit was 12\% of SSBA per year. In 1967 the SSBA was NOK 5 400, so basic benefit was NOK 648.\textsuperscript{1048} In special cases the basic benefit could be increased to 18\% or 24\% of SSBA. Under Chapter 8 Section 9 of the Social Security Act of 1966 the upper age limit of 70 remained, but there was no longer any lower age limit for eligibility. Children who met the eligibility criteria could thus receive basic benefit.\textsuperscript{1049}

The national government was given the authority to set out regulations under Chapter 8 of the Social Security Act, and it did so in Executive Regulation 9547.\textsuperscript{1050} Section 4 of Executive Regulation 9547 gave examples of costs eligible for basic benefit for transport as costs of travel to and from a workplace or school and transport costs related to the practice of a private business, respectively.

The extra expenses for transport could also be counted towards a special tax allowance available under Section 77 of the, now obsolete, Taxation on Income and Wealth Act\textsuperscript{1051}. As the national government was to note much later, it was in this way theoretically possible for those eligible for both basic benefit and the special tax allowance, to have their extra expenses overcompensated for.\textsuperscript{1052}

In 1971 the Social Security Act was amended and Chapter 5 Section 8 was added to the Act.\textsuperscript{1053} The new Section stated, that a person who, due to disease, injury or infirmity, had a considerably impaired functional ability, to the extent that it was considered necessary and appropriate to increase functional ability, could be granted certain benefits. These benefits were to be granted without taking into consideration the person’s earning capabilities. Under Chapter 5 Section 8 Letter b) of the Act, basic benefit for transport, though still regulated under Chapter 8 of the Act, was one such benefit now available

\begin{footnotesize}
\begin{itemize}
\item 1047 Ot prp nr 17 (1965-66) Government’s Proposal on Social Security Act, quoted in Circular Chapter 6, 1.2.3 Lov om folketrygd.
\item 1048 Skatteetaten.
\item 1049 See also Lund & Langholm 1967, p 35.
\item 1050 Forskrift 21 oktober 1966 nr 9547 om ytelse av grunnstønad og hjelpstønad.
\item 1051 Lov 18 august 1911 nr 8 om skatt av formue og inntekt.
\item 1052 Ot prp nr 8 (1996-1997), p 24.
\item 1053 Lov 19 mars 1971 nr 40 om endringer i lov om folketrygd.
\end{itemize}
\end{footnotesize}
under the new “everyday life” set of eligibility criteria. The basic benefit was also increased in special cases when the extra expenses included considerable extra costs for transport, up to 30% or 40% of SSBA.

As before, eligibility for basic benefit for transport was available only to those who met the eligibility criteria before the age of 70. In 1979 the 70-year age limit was abolished for basic benefit except for basic benefit for transport, where the upper limit remained intact. The government noted that the age limit had caused discontent among those concerned, and that the limit seemed arbitrary, unreasonable and not in line with equal treatment before the law. The government’s motives behind retaining the age limit were said to be the prioritizing of subsidies to the municipalities for implementing special transport services for people with disabilities, rather than individual cash benefits to cover transport needs. The government also expressed concerns that granting both special transport services and cash benefits for covering the same need for transport would lead to double compensation for elderly people. By the government’s own admission, fiscal arguments were thus considered more important than equal rights under the law.

During the 1970s the basic benefit developed into a cash benefit with five rates set by the Social Security Act. Under Chapter 8 Section 2 of the Act the first rate was the basic rate. If special circumstances made it reasonable, the basic benefit could be increased to rates two or three. If the extra expenses included considerable costs for necessary transport, basic benefit could be increased to rates four or five. In 1977, for example, the basic rate was 15% of SSBA, rates two and three was 23% and 30% of SSBA respectively, and rates four and five were 40% and 50% of SSBA respectively. Under Section 6 of Executive Regulation 9547 the lower limit of eligibility for basic benefit was extra expenses that were at least two thirds of the basic rate. Only when special circumstances made it reasonable could basic benefit be granted at the basic rate, even if the extra expenses were less than two thirds. Thus, in the example from 1977 the extra expenses had to amount to 10% of SSBA for the person to be eligible for basic benefit. Section 6 of Executive Regulation 9547 also specified that rates four and five of basic benefit only could be granted when the extra expenses included both costs for necessary transport and other costs. Transport costs alone were not enough to be deemed eligible for the two highest rates of basic benefit.

The SSBA was conceived primarily as a regulator for pension benefits and was not considered by the government to be optimal in relation to cash benefits.

aimed at covering given expenses, such as basic benefit. When SSBA was increased more than real costs and inflation, with the objective of increasing the living standard of people existing on pension benefits, the result was that, in the government’s opinion, basic benefit became unnecessarily generous and expensive. From 1981 onwards, the Norwegian parliament, therefore, determined the five rates of basic benefit in percentage of SSBA on an annual basis.  

In 1996 the eligibility limit for basic benefit was raised. The two-thirds rule was abolished and Section 6 of Executive Regulation 9547 now stated that extra expenses below the basic rate were not eligible for basic benefit. At the same time the requirement that the extra expenses comprised at least two types of costs, transport costs and some other cost, for eligibility to the two highest rates was abolished. The two highest rates of basic benefit could now be granted when the annual extra expenses were at least as high as the higher rate, regardless of type.  

In 1997 the number of rates of basic benefit were increased from five to six. The rates were still to be decided by parliament and as percentages of SSBA. These changes were motivated by the national government’s aim to better aid those with the greatest extra expenses. As part of realizing this objective the special tax allowance for extra expenses was also abolished to the extent the expenses were to be covered by basic benefit. The government’s stated objective was also to increase the new top two rates of basic benefit with a view to streamlining resources to those with the greatest needs.  

When the new Social Security Act came into force in May 1997 basic benefit, including basic benefit for transport, was incorporated into Chapter 6 of the new Act. The new Act did not contain any legal grounds for the national government regulating the details of basic benefit. The old Executive Regulation 9547 therefore became obsolete and no new Executive Regulation was issued in its stead.  

The rates of basic benefit continued to be set annually by the parliament. From 2001 onwards, the parliament set the rates in NOK and not in percentages of

---

1056 Circular Chapter 6, 1.2.3.3 Endring i beregning av satser – løsrivelse fra grunnbeløpet fra 1981.
1057 Forskrift 20 desember 1995 nr 1141 om endring av forskrift om ytelse av grunnstønad og hjelpstønad.
1058 Forskrift 23 desember 1996 nr 1376 om endring av forskrift om ytelse av grunnstønad og hjelpstønad.
SSBA. In 2004 around 72,000 persons in Norway received basic benefit for transport.

---

1061 Solvoll 2004, p 15.
13 Cash Benefits for Transport and Escort for Travel as Social Rights in Denmark

In Denmark, cash benefits for transport for people with disabilities currently come in three forms which impact traveling in everyday life for people with disabilities.

Coverage of necessary additional expenses for transport is a tax-exempt cash benefit which is paid by the municipality to the private individual once a month. This benefit is always granted as part of a decision to grant coverage of necessary additional expenses in everyday life. The extra expenses for transport can make up a part, or the whole, of the extra expenses which are to be met by coverage of necessary additional expenses in everyday life. Section 100 of the Social Services Act\textsuperscript{1062} authorizes the national government to regulate in detail the eligibility of the expenses and the criteria for eligibility. The national government has issued Executive Regulation nr 1434\textsuperscript{1063} which came into effect in January 2013, and General Guidelines\textsuperscript{1064} directed to the municipalities on the management and administration of coverage of necessary additional expenses. Due to their comprehensive nature, together with the fact that they are used by those in the municipalities who make the actual decisions about granting or refusing applications, the General Guidelines may be viewed as an important source of knowledge concerning the law on coverage of necessary additional expenses for transport.

Contribution for travel by individual means of transport is a tax-exempt cash benefit which the municipalities can choose to offer to a private individual under whichever terms or regulations the municipality chooses. The benefit is regulated in Section 117 of the Social Services Act.

Escort for travel for adults and young people is a benefit either in kind or paid as a tax-exempt cash benefit. The benefit is regulated in Sections 45 and 97 of the Social Services Act, which authorizes the national government to regulate in detail the eligibility criteria for escorts. The national government has issued Executive Regulation nr 235\textsuperscript{1065}, the General Guidelines\textsuperscript{1066} directed to the municipalities on the management and administration of escort for travel for

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{1062} Bekendtgørelse af lov nr 150 af 16/02/2015 om social service.
\item \textsuperscript{1063} Bekendtgørelse nr 1434 af 23/12/2012 om nødvendige merudgifter ved den daglige livsførelse.
\item \textsuperscript{1064} General Guidelines nr 10 of 15/02/2011 (Vejledning nr 5 til serviceloven).
\item \textsuperscript{1065} Bekendtgørelse nr 235 af 09/03/2012 om betingelser for ledsageordningen efter serviceloven.
\item \textsuperscript{1066} General Guidelines nr 10 of 15/02/2011 (Vejledning nr 5 til serviceloven).
\end{itemize}
\end{footnotesize}
adults, and the General Guidelines\textsuperscript{1067} directed to the municipalities on the management and administration of escort for travel for children, respectively.

13.1 Coverage of Necessary Additional Expenses for Transport – a Rights/Duties Relation?

The normative objective for coverage of necessary additional expenses in everyday life is stated in Section 100 of the Social Services Act as a duty of the municipality, to cover necessary additional expenses for people who meet the eligibility criteria.

Under Section 100 of the Act, the calculation of the coverage of necessary additional expenses for transport is based on the private individual’s probable additional expenses. Coverage can be granted when the estimated additional expenses are at least DKK 6,000 annually. The coverage is calculated on a basic amount of DKK 1,500 monthly. When the estimated additional expenses exceed 21,000 DKK annually, the basic amount increases to DKK 2,000 monthly. Thereafter, the basic amount increases at rates of DKK 500 per month every time the estimated additional expenses increase by DKK 6,000 yearly. The coverage is always rounded off to the nearest DKK 500.

Both Section 100 of the Act and Section 1 of Executive Regulation nr 1434 state the duty for the municipalities in clear language. The municipalities shall grant the benefit to those who meet the eligibility criteria. The only condition is that additional expenses must be a consequence of the impairment and cannot be covered under any other legislation, including other sections of the Social Services Act. Section 5 of Executive Regulation nr 1434 states that the benefit is tax free and not means-tested and Section 4 states that benefits can be granted regardless of form of residence.

13.2 Contribution for Travel by Individual Means of Transport – a Rights/Duties Relation?

The normative objective for contribution for travel by individual means of transport is stated in Section 117 of the Social Services Act so as to give the municipality the possibility to grant a cash benefit to people who, due to

\textsuperscript{1067} General Guidelines nr 11 of 15/02/2011 (Vejledning nr 3 til serviceloven).
lasting physical or psychological impairments, need to travel by an individual means of transport. There is no discernable right on the part of the individual to claim anything from the municipality based on the wording of Section 117 of the Act. There is certainly no duty on the part of the municipality either, only a voluntary possibility. In this particular respect the individual right to contribution for travel by individual means of transport is very weak.

13.3 Escort for Travel – a Rights/Duties Relation?

Under Section 45 of the Social Services Act the normative objective of escort for travel is a duty on the municipalities to offer 15 hours of escort per month to children between the ages of 12 and 18 who, due to an extensive and lasting impairment, cannot travel alone. Under Section 97 of the Act the normative objective of escort for travel is a duty on the municipalities to offer 15 hours of escort per month to persons under 67 years of age who, due to an extensive and lasting impairment, cannot travel alone.

The General Guidelines expand on the normative objective which is described as a tool for the integration into society of citizens with extensive and lasting impairments.1068 Through offering possibilities for autonomous leisure activities, escort for travel is part of the effort to increase independence, freedom of choice and responsibility for one’s own life. Citizens with disabilities have the same need as others to get out of the house and go shopping or participate in cultural and social activities without having to ask family, friends or co-workers for help. Both for active citizens and those who live a more isolated life one objective of escort for travel is to aid in autonomous participation in activities outside the home. For the young the benefit will meet the need to get out of the house without having to rely on the parents for practical help.1069

Both Sections 45 and 97 of the Act and Section 1 of Executive Regulation nr 235 state the duty for the municipalities in a clear language. The municipalities shall grant the benefit to those who meet the eligibility criteria. In this respect the social right of the eligible individual is quite strong. Sections 2 and 10 of Executive Regulation nr 235 state that an eligible person has an unequivocal right to appoint a specific person to perform the task of escort and that the municipality shall approve, employ and instruct the appointed person. Section 7 of Executive Regulation nr 235 clearly states that the

1068 General Guidelines nr 10 of 15/02/2011, 3.
1069 General Guidelines nr 11 of 15/02/2011, 237.
municipality has a duty to provide an escort as a benefit in kind and to organize the escorting in cases when the eligible person, for whatever reason, will not appoint a specific person as escort.

Section 5 of Executive Regulation nr 235 lays down that the 15 hours of escort each month is available for objectives chosen by the eligible person. In situations where the eligible person already has some escort service as an integrated part of other arrangements, for example at a residence, that service will be deducted from the 15 monthly hours, and the escort for travel benefit will thus only be available up to a total combined 15 hours monthly. Case law has established that escort which is rendered by a residential facility to an activity which is medically prescribed is not autonomous enough to correspond to escort for travel, and thus shall not be deducted. Escort provided by the residential facility to voluntary leisure activities was, however, deemed to correspond and could be deducted.1070

People who are granted either personal assistance under Section 96 of the Social Services Act or a contact person for the deaf blind under Section 98 of the Act, are assumed to have all escort for travel needs covered by these benefits, and so are generally not eligible.1071

Under Section 97 of the Act and Section 2 of Executive Regulation nr 235 the municipalities may choose to offer the benefit to adults in cash instead of in kind, if the eligible person agrees and is capable of handling the scheme, including employing escorts, either on their own or with the aid of the municipality.

The municipality has a duty, under Section 8 of Executive Regulation nr 235, to cover any travel expenses for the escort between assignments. It follows from Section 6 that the escort is timed and using the available hours only when on assignment. The time for travel to or from assignments is not deducted from the available hours with the exception of journeys outside the local area, when waiting times and overnight stays are deducted.

The clear language of the Act and Executive Regulation nr 235 distinctively marks the municipalities’ duty and the corresponding claim-rights of eligible people.

---

1070 Case C-8-06 National Social Appeals Board.
1071 General Guidelines nr 10 of 15/02/2011, 6.
13.4 Who Is Eligible for Coverage of Necessary Additional Expenses in Everyday Life?

Under Section 100 of the Social Services Act the municipalities must grant coverage of necessary additional expenses in everyday life to people with lasting physical or psychological impairment, between the age of 18 and the retirement age, 65 to 67 years, as regulated in Section 1 a of the Social Pension Act, or to people over that age but who have suspended payment of their social pension, or to people who receive benefits under Section 14 of the Early Pension Act in the cases where those people are entitled to personal assistance under Section 96 of the Social Services Act, on the condition, that the necessary additional expenses are a consequence of the impairment, and, that the necessary additional expenses cannot be covered under any other legislation, including other sections of the Social Services Act.

The General Guidelines state the normative ideological purposes behind coverage of necessary additional expenses as being the general objective to grant compensation to citizens with lasting physical or psychological impairment for the additional expenses which are a consequence of their impairment. The objective is to assist the citizen and their family to live a life like other citizens without impairments of the same age and in the same general situation in life, through covering necessary additional expenses which are a prerequisite for engaging in everyday life. The General Guidelines also state that the idea behind covering additional expenses is to give the entitled individual the possibility to decide on their own, how to best meet their needs. The benefit shall also ensure that citizens with lasting impairments, who need to make special efforts to keep in contact with the labor market, can do so.

The General Guidelines note that a comprehensive individual evaluation is necessary to establish the extent of the impairment, and the need for aid. Under Section 1 of Executive Regulation nr 1434, lasting physical or psychological impairment, shall be understood as a condition lasting for a considerable time, with radical consequences for the everyday life of the individual, which often create needs for major aid and assistive efforts. The General Guidelines list certain examples of such impairments: intellectual disabilities, mental illness, epilepsy, mobility impairments, brain damage,

---

1072 Bekendtgørelse af lov nr 1116 af 23/09/2013 om social pension.
1073 Bekendtgørelse nr 1232 af 29/10/2013 af lov om højeste, mellemste, forhøjet almindelig og almindelig fortidspension m.v.
1074 General Guidelines nr 10 of 15/02/2011, 36.
1075 General Guidelines nr 10 of 15/02/2011, 37.
reduced speech, and visual or hearing impairments. The list is not meant to be exhaustive. The Guidelines state that a certain diagnosis or condition does not in itself create eligibility, it is rather the impairment in relation to the person’s everyday life, and the need for compensation through additional expenses.

If an applicant has several different impairments, it is the overall situation which is of interest. In case law it has been established that it is the comprehensive evaluation of the collective consequences for the individual which is relevant for the right to benefits.

The lasting criterion shall be understood to mean that an improvement in functional capacity cannot be expected for the foreseeable future. The radical consequences for the everyday life of the individual criterion is an important part of the comprehensive evaluation. The importance of the impairment in relation to the level of activity, residential circumstances, employment, health, and other personal circumstances, such as being a parent, are among the aspects to be evaluated.

The radical consequences for everyday life criterion shall not be interpreted strictly, in the sense that the applicant must be impaired in relation to specific details in everyday life, such as personal care or hygiene or household chores, but is to be understood broadly and comprehensively. In case law, when the applicant could handle personal care, lighter cleaning, some shopping, and go for walks with the dogs, the impairment was not considered to mean radical consequences for their everyday life, and the applicant was refused coverage of necessary additional expenses in everyday life. In another case, a blind applicant was not considered eligible as he managed his everyday life independently and without major aids.

Conversely, a deaf applicant was considered eligible for benefits on the grounds that considerable limitations in communicating with others, being entirely dependent on a translator, and difficulties in taking part in leisure activities and meetings collectively created radical consequences for everyday life. In a case where the applicant was dependent on a specially designed bicycle and specially made shoes, and took a very long time for personal care,

---

1076 General Guidelines nr 10 of 15/02/2011, 40.
1077 Case 232-10 National Social Appeals Board.
1078 General Guidelines nr 10 of 15/02/2011, 41.
1079 General Guidelines nr 10 of 15/02/2011, 42.
1080 Case 223-09 National Social Appeals Board.
1081 Case C-48-06 National Social Appeals Board.
1082 Case 132-10 National Social Appeals Board.
clothes and cooking, and needed help with shopping and cleaning etc, these were considered radical consequences.\textsuperscript{1083} In yet another case the combined consequences of being able to walk only short distances, not being able to use general public transport, and thus being cut off from earlier leisure interests, were considered to constitute radical consequences in the applicant’s everyday life.\textsuperscript{1084}

From Section 1 of Executive Regulation nr 1434 it is understood that the radical consequences often create a need for major aid and assistive efforts. According to the General Guidelines this is handled as an independent eligibility criterion.\textsuperscript{1085} While there can be no requirement for major aid and assistive efforts in an individual case, the impairment and the consequences are typically to be understood as such that would create a need for major aid and assistive efforts. Examples of such efforts include flexible employment, car purchase allowance, assistive technological devices etc.

That an applicant is granted car purchase allowance does not, however, necessarily mean that either the radical consequences for the everyday life criterion, or the needs for major aid and assistive efforts criterion, are met. In case law, a person with reduced functional capacity, but who was relatively independent with the adapted car and with help in the home and other measures, was not considered eligible for benefits.\textsuperscript{1086} It does not matter who provides the aid and assistive efforts; whether from the government or the municipality, or from family or friends, any efforts must be part of the comprehensive evaluation unless they are entirely insignificant.\textsuperscript{1087}

Under Section 100 of the Social Services Act, a person who receives benefits under Section 14 of the Early Pension Act is not eligible for coverage of necessary additional expenses unless they are also entitled to personal assistance under Section 96 of the Social Services Act. This emphasizes the supplemental nature of the coverage of necessary additional expenses benefit.

All benefits are calculated on the applicant’s probable necessary additional expenses. Probable, according to the General Guidelines, is understood as a preliminary prognosis of needs and their costs for the coming year.\textsuperscript{1088} Both single occurrences and recurring costs are calculated together, and if the

\textsuperscript{1083} Case 30-10 National Social Appeals Board.
\textsuperscript{1084} Case 221-09 National Social Appeals Board.
\textsuperscript{1085} General Guidelines nr 10 of 15/02/2011, 42.
\textsuperscript{1086} Case 168-10 National Social Appeals Board.
\textsuperscript{1087} See for instance Case 221-09 National Social Appeals Board.
\textsuperscript{1088} General Guidelines nr 10 of 15/02/2011, 50.
necessary additional expenses come to at least DKK 6,000 per annum, the basic amount of DKK 1,500 per month is granted. If the necessary additional expenses are higher, the basic amount is increased at rates of DKK 500, as explained above.

Even if the costs are below DKK 500 in certain months, the basic amount is still paid, as long as the annual costs are at least DKK 6,000.\textsuperscript{1089} It is not necessary for each cost to be documented, but the calculation is based on a standard template and the basic amount.\textsuperscript{1090}

Coverage of necessary additional expenses for transport can be granted for many kinds of costs. For example costs for travel to and from school, work, medical treatment and leisure, or if a parent escorts a child to and from such destinations or to daycare or after-school activities or some such activity.\textsuperscript{1091} Costs for both public and private transport can be included. If the transport takes place in a private car, it does not matter whether the car is owned, borrowed, rented or bought using car purchase allowance. For private cars, the costs are typically calculated with the help of the reimbursement rates from SKAT\textsuperscript{1092}. The probability requirement means that any costs which are not probable can be subtracted from the calculation and, conversely, if higher costs than the SKAT rate for example are probable, those should be added. However, there is a presumption that the SKAT rate will form the basis for the calculation. In case law the SKAT rate has been applied when the applicant has argued for a calculation of costs based upon the car's actual use of gasoline.\textsuperscript{1093}

From case law it also follows that costs incurred for travel to and from medical treatment and checks shall be calculated on the cheapest fare by general public transport, unless it is necessary to go by car, for example if the applicant cannot travel by general public transport.\textsuperscript{1094}

The General Guidelines specifically state that no costs in conjunction with buying a car with car purchase allowance can be covered by benefits under Section 100 of the Social Services Act.\textsuperscript{1095} Other costs, occurring from the everyday operations and running of a car can, however, be eligible for coverage

\textsuperscript{1089} General Guidelines nr 10 of 15/02/2011, 53.
\textsuperscript{1090} See Case C-31-06 National Social Appeals Board.
\textsuperscript{1091} General Guidelines nr 10 of 15/02/2011, 62.
\textsuperscript{1092} SKAT, the Danish Customs and Tax Administration.
\textsuperscript{1093} Case 257-10 National Social Appeals Board.
\textsuperscript{1094} Case 166-10 National Social Appeals Board.
\textsuperscript{1095} General Guidelines nr 10 of 15/02/2011, 63.
of necessary additional expenses for transport.\textsuperscript{1096} This would apply for example in cases where it is probable that the applicant would not have had a car were it not for the special transport needs caused by the impairment; or if the applicant has an unusually large and operationally expensive car due to the impairment.\textsuperscript{1097} Eligible costs can, for example, pertain to insurance, gasoline or repairs as long as the costs are necessary.

Costs for traveling by taxi are typically not accepted as necessary. Taxi costs can, however, be eligible when, for example, a car bought with car purchase allowance is being repaired or when the applicant is awaiting a decision about or delivery of such a car.\textsuperscript{1098} There are no specified upper limit for coverage of necessary additional expenses for transport. As long as the costs are necessary and probable and shown by the comprehensive evaluation as being caused by the impairment, the costs are eligible.

\textbf{13.5 Who Is Eligible for Contribution for Travel by Individual Means of Transport?}

The national government has remarked that the benefit may be granted to anyone who, due to a lasting impairment, cannot use public transportation. It is entirely up to the municipality to decide if, under which regulations, and to what extent, benefits shall be granted. The national government also notes that, when deciding on the need in an individual case, the municipality can take into account whether or not the applicant’s need for transport will be met by the individual transport services for people with severe mobility impairments.\textsuperscript{1099}

The setting of eligibility criteria for the benefit is entirely up to the municipalities. If the municipality chooses to grant benefits, they can be either means-tested or not, as the municipality decides. The National Board of Social Services\textsuperscript{1100}, an authority under the national government, notes that many municipalities simply do not grant any benefits under Section 117 of the Social Services Act and for those who do, the chosen level of services in the respective municipality governs both the extent of benefits and eligibility.\textsuperscript{1101}

\begin{footnotes}
\footnote{1096}{General Guidelines nr 10 of 15/02/2011, 64.}
\footnote{1097}{Case C-2-06 National Social Appeals Board. See also Case C-4-06 National Social Appeals Board.}
\footnote{1098}{General Guidelines nr 10 of 15/02/2011, 68.}
\footnote{1099}{LFF 1997-04-16 nr 229, Til afsnit IV Hjælpemidler m. v., Til kapitel 19 Hjælpemidler, boligindretning og befordring.}
\footnote{1100}{Socialstyrelsen.}
\footnote{1101}{Socialstyrelsen (website).}
\end{footnotes}
13.6 Who Is Eligible for Escort for Travel?

Section 1 of Executive Regulation nr 235 lists three categories of eligible people:

- Children between the ages of 12 and 18 who cannot travel alone due to extensive and lasting physical or psychological impairment, eligible under Section 45 of the Social Services Act
- People aged between 18 and 67 years who cannot travel alone due to extensive and lasting physical or psychological impairment, eligible under Section 97 of the Social Services Act
- People older than 67 years who were eligible under Section 97 of the Social Services Act before their retirement age retain the right even after receiving the social pension and reaching old age

Section 1 of Executive Regulation nr 235 explicitly states that people with extensive and lasting impairment due to mental illness or social causes are not eligible for escort for travel. The national government has noted that working with these groups of people requires special competence which is not meant to be covered by escort for travel. In case law an applicant with a somatic brain disease was, however, granted escort for travel on the ground that the mental symptoms were caused by the impairment, rather than constituting the impairment, and so were not considered to constitute a mental illness in the sense that would preclude eligibility.

An important case before the National Social Appeals Board has established three important questions which need to be answered in the evaluation process to decide eligibility:

- Can the applicant not travel alone outside the home due to extensive and lasting physical or psychological impairment?
- Can the applicant be considered to require individual escort without requiring also some social or pedagogic input?
- Can the applicant express an autonomous and informed desire (not necessarily verbally) to take part in various activities?

1102 LFF 1997-04-16 nr 229, Til kapitel 14 Personlig hjælp, omsorg og pleje m. v., Til § 76.
1103 Case C-42-00 National Social Appeals Board.
1104 Case C-25-00 National Social Appeals Board.
The second and third questions can potentially exclude persons with cognitive disabilities. In case law a person with a chromosome syndrome was refused escort for travel on the ground that the person was also considered to need social and pedagogic input while traveling. In another case, conversely, an applicant with aphasia and epilepsy was granted escort for travel on the ground that, even if the ability to communicate was considerably impaired, the applicant was greatly aided by the escort in traveling outside the home, and could make autonomous decisions and choices about where to go.

According to the General Guidelines, escort for travel shall only be used for autonomously chosen activities. The General Guidelines stress the importance of individual autonomy and freedom of choice, stating for example that there should be no limits to when escort can be used, and that the escort may well be used in the evening. At the same time the General Guidelines remark that it is very important that escort for travel is used for the right type of activities and that certain activities, such as the escort functioning as a friend or a visitor, are not desirable. There is thus a tension between escort for travel being used as a tool to increase individual autonomy, and the desire to ensure that the benefit is used optimally in relation to the normative objective.

Section 6 of Executive Regulation nr 235 states that the 15 monthly hours or, when applicable, the cash benefit corresponding to the 15 monthly hours, can be saved for up to six months, so that in a given month up to a maximum of 90 hours may be at the disposal of the eligible person. Any saving of hours from one month to another requires an agreement between the eligible person and the municipality regarding details and the municipality issues regulations governing such saving.

The General Guidelines state that the municipalities must balance the need for flexibility with the need to have a system which is possible to administer. The municipality can decide that, without agreement, the surplus hours will be forfeited, that all hours for the current month must be used before saved hours are used, that using saved hours will mean they are deducted on a month-by-month basis as they were earned, and that saved and unused hours will be forfeited after six months. Hours shall not be used in advance.

Escorts should be recruited among people with interest or experience in working with disabled people, according to the General Guidelines. In any

---

1105 Case C-17-03 National Social Appeals Board.
1106 Case 74-10 National Social Appeals Board.
1107 General Guidelines nr 10 of 15/02/2011, 11 and 12.
case the municipality should offer the escorts an introduction and try to ensure that they have sufficient knowledge about disabilities and what might be required in each individual case. When possible, the municipality shall strive to find an escort with similar interests and of a similar age to the eligible person.  

The eligible person covers his or her expenses for traveling. The expenses for the escort can be covered by either coverage of necessary additional expenses for transport, if the person meets the eligibility criteria for that benefit, or be covered by the municipality under Section 9 of Executive Regulation nr 235. This Section states that the municipality, upon request from the eligible person, can grant coverage of the escort’s expenses by up to DKK 797 annually. The amount is paid once a year, and is based on the probability of the expenses in the same way as when calculating coverage of necessary additional expenses for transport. Section 9 also gives the municipalities the choice of covering the actual expenses of the escort, based on the costs for the escort’s travel by local public transport and, if the escort’s presence is necessary for the eligible person during some other activity, based also on the costs to the escort of such activity.

13.7 Impact of Funding on the Right to Coverage of Necessary Additional Expenses for Transport

Under Section 100 of the Social Services Act the rates for the benefit coverage of necessary additional expenses are set as a template with no specified upper limit. Because of the clear duty on the municipalities in Section 100 of the Act to provide the benefit, and in Section 173 of the Act to pay the costs for benefits under the Act, and because the rates are set by Section 100 of the Act, the social right to coverage of necessary additional expenses is relatively strong, in the sense that it is independent of short-term fiscal or budgetary considerations. The legal construction of the benefit, where the actual probable costs form the basis for the calculation, also serves to strengthen the right because the benefit increases if costs and prices increase, making the benefit even more independent of budgetary concerns.

The municipalities and the national government equally share the actual costs for coverage of necessary additional expenses. Under Section 177 of the Social Services Act the national government reimburses 50% of the costs for the benefit to the municipalities.

1109 General Guidelines nr 10 of 15/02/2011, 21, 22 and 23.
13.8 Impact of Funding on the Right to Contribution for Travel by Individual Means of Transport

For funding, the benefit is entirely dependent on the political will in the respective municipalities. In this respect the individual right to contribution for travel by individual means of transport is very weak.

13.9 Impact of Funding on the Right to Escort for Travel

Under Sections 45 and 97 of the Social Services Act the benefit escort for travel is quantified in hours. Because of the clear duty of the municipalities, stated in Sections 45 and 97 of the Act to provide the benefit and their clear duty in Section 173 to pay the costs for benefits under the Act, and because the number of hours is laid down by the Act, the individual right to escort for travel is relatively strong, in the sense that it is independent of short-term fiscal or budgetary considerations. The legal construction of the benefit, with a set number of hours, also serves to strengthen the right as the right to the hours remains the same, regardless of any cost increases, making the individual right to escort for travel rather independent of budgetary concerns.

13.10 Who Is Obliged to Provide Coverage of Necessary Additional Expenses for Transport?

Under Section 100 of the Social Services Act and Section 1 of Executive Regulation 1434 the municipality shall provide coverage of necessary additional expenses for transport directly to those who meet the eligibility criteria. From Sections 7 and 10 of Executive Regulation 1434 it follows that the cash benefit shall be paid monthly by the municipality until the eligible person either reaches the retirement age or dies.

13.11 Who Is Obliged to Provide Contribution for Travel by Individual Means of Transport?

No one is obliged to provide contribution for travel by individual means of transport. Under Section 117 of the Social Services Act the benefit is voluntary on the part of the municipalities. In this respect the individual right to
contribution for travel by individual means of transport is so weak as to be non-existing.

13.12 Who Is Obliged to Provide Escort for Travel?

Under Sections 45 and 97 of the Social Services Act the municipality shall provide escort for travel, either as cash or in kind, directly to those who meet the eligibility criteria. When the benefit is provided in kind all contractual responsibilities for agreements with the escort rests with the municipality. Both Sections 45 and 97 explicitly state that the amount to cover the expenses for the escort shall be paid by the municipality upon the request of the eligible person.

13.13 Legal Guarantees for Entitlement to Coverage of Necessary Additional Expenses for Transport

A decision to grant an applicant coverage of necessary additional expenses is a decision which remains valid until there is a change in circumstances. Under Section 148 of the Social Services Act, the municipalities are obliged to follow up decisions and make sure that the benefit is correctly calculated and sufficient. In this respect the social right to the benefit is relatively weak as it is treated as an ongoing benefit. The municipality can, at any time, revise, revalidate and recalculate the basis for the decision.

The formal legal guarantees are otherwise quite strong. Under Section 166 of the Social Services Act a refusal to grant coverage of necessary additional expenses can be appealed to the National Social Appeals Board, which has full and complete discretion in relation to any case brought before it. Under Section 50 of the Act on Legal Security and Administration in the Social Field\textsuperscript{1110} the final decision of the Board cannot be further administratively appealed.

\textsuperscript{1110} Bekendtgørelse nr 983 af 08/08/2013 af lov om retssikkerhed og administration på det sociale område.
13.14 Legal Guarantees for Entitlement to Contribution for Travel by Individual Means of Transport

Section 117 of the Social Services Act specifically states that the municipality’s decisions regarding contribution for travel by individual means of transport cannot be appealed administratively to any other public authority. This means that whatever the municipality decides is right. In this respect, the individual right to contribution for travel by individual means of transport is so weak as to be non-existing.

13.15 Legal Guarantees for Entitlement to Escort for Travel

A decision to grant escort for travel is not usually revoked or changed unless the individual circumstances of the eligible person change rather drastically. While the municipality can formally reevaluate the situation and make a new decision, it is unlikely unless the eligible person is also granted some other benefit, such as personal assistance under Section 96 of the Social Services Act, which is a benefit that largely makes escort for travel redundant. In this respect the individual legal right to escort for travel is quite strong.

A decision to refuse escort for travel can be administratively appealed under Section 166 of the Social Services Act to the National Social Appeals Board, which has full and complete discretion in relation to any case brought before it. Under Section 50 of the Act on Legal Security and Administration in the Social Field the final decision of the Board cannot be further administratively appealed.
14 Basic Benefit for Transport as a Social Right in Norway

Basic benefit for transport is a tax-exempt cash benefit which is paid by the national government to the private individual once a month. Basic benefit for transport is legally defined in Chapter 6 Section 3 Letter b) of the Social Security Act as a part of the broader legal definition of basic benefit in Chapter 6 Section 3 of the Act. Basic benefit for transport is, therefore, always a part of a legal decision to grant basic benefit, and the applicant’s extra expenses for transport can be either a small or a large part of the basis for granting basic benefit. The extra expenses for transport can make up a part, or the whole, of the extra expenses which are to be covered by the basic benefit.

The normative objective of basic benefit is regulated in Chapter 6 Section 1 of the Social Security Act which states that it is to compensate people for certain extra expenses incurred by disease, injury or infirmity.

Within the national government the Norwegian Labor and Welfare Administration (NAV) is responsible for the management and administration of basic benefit. In this capacity the NAV has issued two General Guidelines, or Circulars, for those within the NAV handling applications and making decisions regarding basic benefit.1111 As a consequence these Circulars are important sources for basic benefit law, and they are all the more important as the national government has not issued any executive regulation on basic benefit.

Under Chapter 2 of the Social Security Act, the social rights under Chapter 6 of the Act, which include basic benefit for transport, are available to anyone who has legally lived continuously in Norway for three years, or has lived in Norway for one year during which time they were physically and psychologically capable of performing normal waged work. Under Chapter 2 Sections 8 and 9 those who reside abroad can also receive certain benefits, including basic benefit for transport, when certain eligibility criteria are met.

There are general exceptions to the eligibility criteria in Chapter 2 of the Act. Under Chapter 6 Section 8 those who live in care facilities or residential institutions, operating under either the Municipal Health and Care Services Act1112 or the Special Health Services Act1113, for a period expected to be longer

1111 Circular Chapter 6 and Circular § 6-3.
1112 Lov 24 juni 2011 nr 30 om kommunale helse- og omsorgstjenester m.m.
1113 Lov 2 juli 1999 nr 61 om spesialisthelsetjenesten m.m.
than three months, are not eligible for basic benefit unless they have special personal extra expenses not covered by the responsibilities of the facilities or institutions. The same rules apply, during their stay, to those who live in such institutions as a part of legally mandated psychiatric care, or are otherwise incarcerated due to convictions for criminal offenses, or in custody.

14.1 Basic Benefit for Transport – a Rights/Duties Relation?

Chapter 6 Section 3 Letter b) of the Social Security Act creates a duty on the national government to grant basic benefit for transport, including the running costs for the eligible person’s car. The language is straightforward as the Section simply states that basic benefit is granted to those who meet the general eligibility criteria. The government’s duty thus corresponds to an implied right for the private individual, who meets the eligibility criteria, to claim basic benefit for transport.

Chapter 6 Section 3 of the Act states that eligibility requires that the necessary extra expenses at least correspond to the lowest rate. Section 3 further states, in straightforward language, that benefits at a higher rate are granted when the necessary extra expenses at least correspond to the higher rate.

According to the NAV, basic benefit for transport can be granted for extra expenses comprising taxi fares, private transport by, for example, family or friends, costs for running a private car, and general public transport fares in cases when there is a need for increased use of general public transport.¹¹¹⁴

14.2 Who Is Eligible for Basic Benefit for Transport?

Chapter 6 Section 2 of the Social Security Act sets out general eligibility criteria for all benefits regulated in Chapter 6. Under Section 2 the prerequisite for eligibility is that the person, after appropriate treatment, continues to have a lasting disease, injury or infirmity. Benefits can be granted when the appropriate treatment is ongoing, if it is clear that there will be no cure.

¹¹¹⁴ Circular § 6-3, § 6-3 Første ledd bokstav b – Transport, herunder drift av medlemmets bil, Generelt.
Appropriate treatment means medical treatment. The treatment shall be scientifically based and indicated for the disease in question. Exceptions can be made in cases when what is considered to be the most appropriate treatment is also discouraging or particularly burdensome for the applicant. If the person refuses treatment, the NAV states that there needs to be a judgement of whether the objections are serious and not, for example, motivated by a desire to claim benefits. The NAV declares that objections to surgery must almost always be accepted at face value due to the risks inherent in such procedures. Objections to psychological treatment must also be accepted, for example, when the person’s objections are, in fact, a consequence of their medical condition.

If an applicant has not finished an appropriate course of treatment at the time of application for basic benefit for transport, it must have reached a point at which it is possible to make a medical prognosis of whether the disease, injury or infirmity will be lasting. According to the NAV this means that a cure cannot be expected within a short time.

The three categories disease, injury and infirmity respectively, are to be understood as equal and comprehensive. There is no need to establish which category is applicable in any given case. The NAV concludes that in principle the three categories mean the same thing. A lasting disease can be either physiological or psychological in nature. The definition of disease will be dependent on what the medical science, at any given time, defines as disease. Specifically, disease is understood to be scientifically based and generally acknowledged in medical practice.

The lasting criterion means that the impairment can be expected to last for at least two or three years or longer. The time is calculated based on when the disease, injury or infirmity occurred. In the Circular the NAV notes that the costs must also be lasting in character. The extra expenses are considered lasting if they last for at least two or three years or longer, or, if they recur periodically or repeatedly over time.

---

1115 Circular § 6-2, § 6-2 Første ledd – Vilkår om sykdom, skade eller lyte – Kravet til "hensiktsmessig behandling".
1116 Circular § 6-2, § 6-2 Første ledd – Vilkår om sykdom, skade eller lyte – Hvis medlemmet motsetter seg behandling.
1117 Circular § 6-2, § 6-2 Annet ledd – Behandlingen ikke avsluttet.
1118 Circular § 6-2, § 6-2 Første ledd – Vilkår om sykdom, skade eller lyte – sykdomsbegrepet.
1119 Circular Chapter 6, 2.1.2 Vilkår om gjennomgått hensiktsmessig behandling og sykdom, skade eller lyte, § 6-2.
1120 Circular § 6-2, § 6-2 Første ledd – Vilkår om sykdom, skade eller lyte – sykdomsbegrepet.
1121 TRR 2004-3035.
1122 Circular § 6-3, § 6-3 Første ledd – Generelt, Varighetskravet.
Chapter 6 Section 3 states that basic benefit is only granted when the eligibility criteria are met before the age of 70 years. This is to be understood quite literally to mean that basic benefit for transport can be applied for, and granted, after 70 years of age, as long as the eligibility criteria were met before the applicant’s 70th birthday. Basic benefit for transport that has been granted before 70 years of age will continue for as long as the eligibility criteria are met. An increase in extra costs after the age of 70, however, cannot create eligibility for a higher rate of basic benefit.\textsuperscript{1123}

Chapter 6 Section 3 Letter b) of the Act states that basic benefit for transport is granted to persons who, due to lasting disease, injury or infirmity have necessary extra expenses for transport, including costs for running the person’s car. Thus, the relation between the applicant’s costs for transport and their impairment becomes a relevant part of the evaluation for eligibility.

The NAV states that extra expenses must be properly verified, for example with receipts and suchlike. It is, however, often not practical or possible for the applicant to produce documents and verifications for certain types of costs, and the NAV exercises administrative discretion in these instances. The Social Security Court has stated that there is a difference between verifying expenses and affirming probability, and that affirming probability is sufficient for granting basic benefit for transport.\textsuperscript{1124} In the Circular the NAV summarizes an evidentiary rule: to be granted benefits, the necessary extra expenses must be probable. Specifically, an affirmed probability must be established that the extra expenses are real and necessary.\textsuperscript{1125}

Extra expenses, according to the NAV, are ongoing costs which accrue to a person after a disease or injury has occurred, and which the person did not have before. When there are no “before” or “after” occurrences in time, for example when a disease or injury is congenital, a comparison shall be made between the person’s costs and the costs healthy people would have for the same kind of purposes. When evaluating costs in these cases the so-called standard budget by the National Institute for Consumer Research\textsuperscript{1126} is to be used as the tool for comparison.

As extra expenses refer to ongoing recurring costs, single purchases are not eligible for basic benefit for transport.\textsuperscript{1127} This applies to all costs which are

\textsuperscript{1123} Circular § 6-3, § 6-3 Fjerde ledd – 70-årsgrensen.
\textsuperscript{1124} TRR 2006-3711.
\textsuperscript{1125} Circular § 6-3, Kort om saksbehandling ved krav om grunnstønad, Hvor kan dokumentasjon innhentes?.
\textsuperscript{1126} Statens institutt for forbruksforskning, SIFO.
\textsuperscript{1127} Circular § 6-3, § 6-3 Første ledd – Generelt, Begrepet "ekstrautgifter".
pertinent to a purchase, for example of a car.\textsuperscript{1128} If the cost for acquiring a car is financed by a loan which is paid off in monthly installments, neither the installments nor the interest is eligible for benefits.\textsuperscript{1129}

The person’s medical condition must be the reason for their extra expenses. According to the NAV sufficient causation is established when the disease or injury is either the most probable or most obvious cause of the cost.\textsuperscript{1130}

The extra expenses must be necessary. According to the Social Security Court, this means that cheaper or more affordable alternatives must be chosen, if they exist.\textsuperscript{1131} According to the NAV the necessary criterion shall not be understood to mean that the cost must be utterly essential in nature, but it shall not be understood to include any personal wishes or desires either. The NAV states that general guidelines for the necessary criterion cannot be issued, but administrative discretion has to be exercised in the individual case based on the available information.\textsuperscript{1132} The main point when evaluating whether extra expenses are necessary is the applicant’s perceived need for transport. The NAV states that the applicant must have a real need for travel, with or without specially adapted transport. The extent of the extra expenses will be dependent upon the need for traveling and the kind of vehicle used.\textsuperscript{1133} In case law, an applicant’s perceived need for transport has been evaluated as both relative to the need of a healthy person, and also as relative to the applicant’s perceived extra need for transport.\textsuperscript{1134} The evaluation in cases with an acquired impairment typically focuses on the need before and after the disease or injury. The evaluation in cases with a congenital impairment involves a hypothetical comparison between the applicant’s need and the need of a healthy person in otherwise similar circumstances.\textsuperscript{1135}

The availability and extent of special transport services for people with disabilities can affect the perceived need for transport. If special transport services are not readily available, or not available at all, or the applicant is not eligible for such services, the need for transport can be met by basic benefit for transport. Conversely, if special transport services are available, this affects the perceived need for transport since at least some of the applicant’s

\textsuperscript{1128} See for example TRR 2009-2269.

\textsuperscript{1129} Circular § 6-3, § 6-3 Første ledd bokstav b – Transport, herunder drift av medlemmets bil, Grunnstenad til drift av egen bil.

\textsuperscript{1130} Circular § 6-3, § 6-3 Første ledd – Generelt, Krav til årsaksammenheng.

\textsuperscript{1131} TRR 2009-970.

\textsuperscript{1132} Circular § 6-3, § 6-3 Første ledd – Generelt, Utgiftenes må være nødvendige.

\textsuperscript{1133} Circular § 6-3, § 6-3 Første ledd bokstav b – Transport, herunder drift av medlemmets bil, Generelt.

\textsuperscript{1134} See for example LG 2008-50914.

\textsuperscript{1135} Circular § 6-3, § 6-3 Første ledd bokstav b – Transport, herunder drift av medlemmets bil, Generelt.
need is then met by the services. Further, the passenger fees for special transport services for people with disabilities are not considered as extra expenses, nor are any passenger fees for escorts or personal assistants. **1136**

Extra expenses in conjunction with travels to and from work, running a household, following an education, or running a private business, are all typically considered necessary. As always, a prerequisite is that the extra expenses for such transport derive from the person’s disease, injury or infirmity. **1137**

It has been established in case law that, from the applicant’s costs, a deduction shall be made to correspond to the presumed costs of a person in similar circumstances but without the impairment. The Social Security Court has stated that such deductions cannot rely entirely on standard templates, but have to be evaluated in each individual case. **1138**

Case law has also established that combined use of the means of transport makes possible deductions from the applicant’s costs, when calculating basic benefit for transport. For example, if there is one car in the family, the evaluation must consider whether the car is also used by the other members of the family. Such costs are not considered due to the applicant’s impairment, but are caused by normal use in the family. The courts have noted that combined use of a car creates an identification of the applicant with the family. **1139** Even if the applicant does not own the car, and claims not to have used it and even to not have had access to it, that there is a means of transport available in the family is a factor that has to be considered in the individual evaluation. **1140** The NAV states that the extent of combined use must be evaluated in the individual case, but when the application concerns basic benefit for transport for the operation of the person’s car, and the applicant cannot drive the car, this is often an indication of combined use. **1141** In case law the perceived need for transport has been considered at least partially met when the applicant’s spouse has a car. **1142**

---

**1136** TRR 2008-204. See also Circular § 6-3, § 6-3 Første ledd bokstav b – Transport, herunder drift av medlemmets bil, Forholdet til fylkeskommunale/kommunale transportordninger.

**1137** Circular § 6-3, § 6-3 Første ledd bokstav b – Transport, herunder drift av medlemmets bil, Reiser knyttet til arbeid, opplæring, eget erverv og bedring av den alminnelige funksjonsevne.

**1138** TRR 2000-2335.

**1139** LH 2005-182853 and TRR 2009-2029.

**1140** TRR 2012-1396.

**1141** Circular § 6-3, § 6-3 Første ledd bokstav b – Transport, herunder drift av medlemmets bil, Grunnstønad til drift av egen bil.

**1142** TRR 2006-265.
While costs for, or in conjunction with, the purchase of a vehicle are not eligible for basic benefit as costs for running a car, many other kinds of costs are. The NAV lists costs for comprehensive insurance, annual fees, maintenance, gas, oil, tires, and service and repairs based on a template of ongoing costs for a car bought with car purchase allowance. These costs are calculated together and the deduction of transport costs which everybody has is made, the result is the eligible extra expense. Typically the extra expense for running the applicant’s car corresponds to a sum between rates 3 and 4 of basic benefit. And, according to the NAV, the result in most cases is thus to grant basic benefit at rate 3 to cover the costs of running the applicant’s car. If there is combined use of the car, within the family or otherwise, the perceived extent of this will affect the rate. Depending on extent, either rate 1 or rate 2 of basic benefit will then typically be granted.1143

When applying for basic benefit for transport for running the person’s car the evaluation will take note of whether the applicant had a car for a long period of time before the application. If the applicant had a car before the impairment, the presumption, established in case law, is that the costs for running the car are not due to the impairment, and as such are not eligible for basic benefit for transport.1144 The presumption, however, is not unqualified. If the applicant has had a car for a long period of time, the evaluation must also consider whether the applicant has had a real choice regarding means of transport.1145 If the impairment is considered the actual cause behind the applicant’s having a car, the costs for running it must also be considered as eligible extra expenses.1146

Costs for running a car are not considered necessary if the applicant can travel by general public transport. In case law, women with various diagnoses such as arthritis or fibromyalgia, have been refused basic benefit for transport for running their cars, as it has been found they are able to use general public transport, despite their medical conditions, and in some cases even though they can only do so with some difficulty.1147 The NAV has set up a 2 km distance rule, which is the upper limit for how far healthy people can be expected to walk in everyday life, for example to the nearest bus stop.1148 In case law the 2 km rule has been considered valid but not unconditionally so.

1143 Circular § 6-3, § 6-3 Förste ledd bokstav b – Transport, herunder drift av medlemmets bil, Grunnstønad til drift av egen bil.
1145 TRR 2006-2482 and TRR 2009-609.
1146 TRR 2006-839 and TRR 2006-1287. See also TRR 2008-1646.
1148 Circular § 6-3, § 6-3 Förste ledd bokstav b – Transport, herunder drift av medlemmets bil, Særskilt transport.
The Social Security Court has stated that the distance limit of 2 km cannot be absolute, but the location of the applicant’s residence must be evaluated together with other circumstances in the individual case.\textsuperscript{1149} It has been established in case law, however, that if the applicant’s residence is remotely located, or otherwise located where general public transport is not an option for anyone, costs for running a car are typically deemed to not be due to the impairment.\textsuperscript{1150}

14.3 Impact of Funding on the Right to Basic Benefit for Transport

Under Chapter 6 Section 3 of the Social Security Act, the Norwegian parliament sets the rates of basic benefit annually as a part of the national budgetary process. As such the benefit is entirely dependent on political decisions concerning funding. On the other hand the parliament has chosen to increase the rates every year since the Social Security Act came into force, thus allowing the benefit to follow developments in prices and inflation.\textsuperscript{1151}

The legal definition of the benefit, where certain actual costs are the basis for eligibility, also serves to make the benefit more independent of government funding. If the parliament should let the rates go unchanged while costs and prices increased, more people would become eligible for higher rates of basic benefit. This aspect strengthens the individual legal right to benefits.

14.4 Who Is Obliged to Provide Basic Benefit for Transport?

Chapter 2 of the Social Security Act states that every person who resides in Norway is a member of the social security system, and thus the national government is the provider of benefits. Under the Act on the Norwegian Labor and Welfare Service (NAV)\textsuperscript{1152} the NAV is tasked with and authorized to manage all benefits under the Social Security Act, including basic benefit. The individual right to claim benefits is therefore always directed to the NAV, which must also always provide benefits, if granted.

\textsuperscript{1149} TRR 2009-757.  
\textsuperscript{1150} TRR 2005-1518, TRR 2009-241 and TRR 2009-2268.  
\textsuperscript{1151} NAV Vedlegg 1 til kapittel 6 - § 6-3 Satser (website).  
\textsuperscript{1152} Lov 16 juni 2006 nr 20 om arbeids- og velferdsforvaltningen (NAV).
14.5 Legal Guarantees for Entitlement to Basic Benefit for Transport

Under Chapter 21 Section 6 of the Social Security Act, basic benefit is considered an ongoing form of benefit. Under this Section, a decision to grant basic benefit can be reversed or changed, if there is a change in the person’s eligibility, for example, if the person’s transport costs decrease due to changes in health, or any other circumstances.

The applicant whose application for basic benefit is refused by the NAV has a right to administrative appeal. Under Chapter 21 Section 12 of the Social Security Act, a decision can first be appealed to the authority decided by the NAV. That authority will be NAV Appeals, a department within the NAV, created under Section 5 of the Act on the Norwegian Labor and Welfare Service (NAV). NAV Appeals has the authority to retry the decision in its entirety. If the decision is not overturned in the applicant’s favor it can be further appealed, under Chapter 21 Section 12 of the Social Security Act, to the Social Security Court, operating under the rules set out in the Act on Administrative Appeal to the Social Security Court. The Social Security Court has complete discretion over the decision concerning basic benefit under Sections 15 and 20 of the Act on Administrative Appeal to the Social Security Court. The final verdict of the Social Security Court is the final verdict of administrative appeal available to the private individual. Administrative appeal applies to every part of a decision. In this respect the private individual’s legal right to basic benefit is quite strong.

If the Social Security Court’s final verdict is not in the applicant’s favor, the applicant can appeal the decision to the regular courts. Under Section 23 of the Act on Administrative Appeal to the Social Security Court, the regular courts can rule on the legality of the final verdict of the Social Security Court. Such an appeal will not be administrative in nature, but will be handled as a civil lawsuit between the individual and the government, where the main legal question will be legality, that is, whether the earlier decisions and verdicts were legally correct. Under Chapter 21 Section 12 of the Social Security Act, appeal to the regular courts is only possible if the process of administrative appeal has been completely exhausted, that is, the Social Security Court must have ruled in the matter.
PART V – Arrival
There is one single intellectual task worthy of the name: to defend the people from the princes and the darkness

Theodor Kallifatides

15 Out and About in the Welfare State – Conclusions and Discussion

The various transport provisions presented in this thesis all aim to solve the same kind of problems: the transport needs of people with disabilities which cannot be met by inaccessible public and private transport. The comparison shows that each part of the study corresponds to a strategy for solving these problems. Provisions regarding adapted private transportation through private car ownership form an important part of the strategy in all three countries. Provisions regarding collective transportation by means of special public transport is an important part of the strategy mainly in Sweden, while provisions for cash reimbursements to people for privately purchasing special transport are important parts of the strategy mainly in Denmark and Norway.

The transport service provisions studied in Part II (Chapters 4 – 7) aim to compensate for the inaccessibility of public transport by special public transport. Typically this means replacing traveling by buses, trains, trams etc with the use of various taxi vehicles. The comparison shows that this strategy is much more important in Sweden than it is in Denmark or Norway. These are statutory rights in Sweden for both local and national journeys, reflecting the status of the special transport services in everyday life for people with disabilities. In comparison, the corresponding services in Denmark and Norway are small and limited in scope. The Danish individual transport services are a statutory right, but for a much smaller group of eligible people compared with Sweden, and with a low number of guaranteed journeys, so that the Danish services could never be expected to fulfill alone the role of the main provider of everyday life transport needs. The Norwegian special transport services are not a statutory right for anyone and, while an important addition for a wider group of people than in Denmark, could also not be expected on their own to meet the needs for transport in everyday life.

The provisions studied in Part IV (Chapters 12–14), cash benefits to cover individual travel costs, are the counterpoint to the transport services dealt
with in Part II. In Sweden the legal possibilities of receiving cash benefits are relatively insignificant and such benefits for travel costs are simply of little practical importance there. Quite the contrary is true in Denmark and Norway where cash benefits are of great importance. The Danish and Norwegian benefits are statutory rights and form a major part of the strategy for meeting the transport needs in everyday life for large numbers of people with disabilities.

The cash benefits studied in Part III (Chapters 8–11), car allowances, aim to promote private car ownership as a solution to the everyday needs for transport. These benefits are a statutory right in all three countries. The legal construction of car allowances varies among the countries, with somewhat more standardized template legal criteria in Sweden, and more elaborate individual legal criteria in Denmark and Norway.

The disposition of this final chapter will be as follows: first, in 15.1, the answers to the empirical questions will be discussed. In this discussion, the normative structures in Swedish, Danish and Norwegian law on the right to transport in everyday life for people with disabilities will be made visible and come into focus. Subsequently, in 15.2, three ideal types of social citizens, constructed by the law governing the right to transport in everyday life for people with disabilities, will be discussed. These constructions are usually not discernable in an individual case or in some specific legislation. To be able to see clearly how the law constructs these ideal citizens requires both a large amount of legal material and a good understanding of the normative structures. These ideal-citizen constructions will make visible a social citizenship in law for people with disabilities, regarding the right to transport in everyday life. Next, in 15.3, there follows a discussion of some results from the perspective of the legal cultures in the Nordic welfare states. Finally, in 15.4, some general conclusions from this thesis are advanced in the form of two theories which I have chosen to call the general relativity theory of framework law, and the special relativity theory of framework law. These two theories are not only built on the results in this thesis, but also on my understanding of the results of other legal scholars in Nordic social and disability law.
15.1 The Normative Structures in Swedish, Danish and Norwegian Law on the Right to Transport in Everyday Life for People with Disabilities

In Parts II, III and IV of the thesis empirical questions concerning the law in the three countries were asked, answered and analyzed. As was discussed in Chapters 1 and 2, these questions were inspired by a long tradition in legal scholarship in Nordic social law, where the main aim is to test the strength of social rights. The empirical questions are: if the transport provision is a rights/duties relationship, who is eligible for benefits, what is the impact of funding on the individual right, who is obliged to provide, and what are the legal guarantees of the right?

The everyday life perspective has been used throughout the thesis. As was discussed in Chapter 1, the everyday life perspective is based on the views that, when provisions regulated by law matter to people on a daily basis, they are important for the whole of society and are therefore interesting topics for legal research. The everyday life perspective was also important in this thesis because it highlights certain ideological values. These values, individual autonomy and equal participation, are discussed in Chapter 1, and are important for the right to transport in everyday life for people with disabilities.

One result from the comparison is that there is indeed a “Nordic model” for the law on the right to transport in everyday life for people with disabilities, insofar as the different normative structures shape many similarities which are characteristic of something larger than each of the three countries individually. This is not to say that there are no differences between the countries, or that these differences are not important, or that it does not matter from an individual point of view which country one lives in. It is, however, to say that the normative structures and problems are in many ways similar and common. It is quite possible that these normative structures and problems are rooted in the effects on the legal cultures of having large welfare states with strong redistributive ambitions in a Nordic context. In the following conclusions and discussions, the normative structures are not to be understood to impose some kind of artificial sameness or similarity on the law of the three countries. The normative structures instead are to be understood as the normative structural patterns and problems having a bearing, albeit to different degrees in different situations, on the right to transport in everyday life for people with disabilities in all three countries.

Any individual autonomous control over transport in everyday life is dependent on the form of services or benefits provided. Car allowances, the
benefits for private car ownership studied in Part III, are the provisions which best support the values of autonomy in transportation in everyday life. The benefits for car ownership, however, presuppose that the entitled person, or the family, have the economic means to both sustain car ownership and operate the vehicle. These benefits also presuppose that the entitled person does not have an impairment which makes it hard or impossible to drive a car.

In most cases, the second best option for securing individual autonomous control over transport in everyday life is probably cash benefits, studied in Part IV, aimed at reimbursing travel costs. While limited in scope, and subject to varying degrees of administrative control, and availability of accessible taxi services, these benefits allow an eligible person some autonomous choice in a specific situation to decide when, where, how and with whom to travel.

In contrast, the various special public transport services studied in Part II, which law and policy designate to resemble and correspond to general public transport, are the provisions affording the eligible persons the least autonomous control over everyday life transportation. These services can have all the restrictions and limitations of general public transport: running to a schedule or timetable, being available only at certain hours of the day, for only certain routes, and so on. At the same time, the freedoms of general public transport can also be denied: the number of journeys allowed can be severely restricted, and the entitled person may be charged a much higher fee than the often affordable fees of general public transport.

15.1.1 A Rights/Duties Relation?

The empirical question about whether the provision of the various types of transport can be characterized as a rights/duties relation between the states or municipalities and the individuals shows that the answer depends on the kind of provision. Car allowances in all three countries, and the various cash benefits in Denmark and Norway, are legal duties placed on the municipalities or the national governments, corresponding to legal rights for the individuals who meet the eligibility criteria. The rights/duties relations regarding special transport services are more complex. In Sweden, the rights/duties relationship is relatively clear, although the possibilities for the municipalities to limit the scope of the duty, and thus the corresponding individual right, makes it rather soft and flexible. The Danish individual transport services for people with severe mobility impairments have the strongest rights/duties relationship of all the services, but the limits in eligibility, and the statutory cap on the duty regarding the number of journeys, makes it less important for
the individuals concerned than it potentially could be. At the other end of the spectrum, the Norwegian services can perhaps not be characterized in terms of rights or duties at all; the individual right especially seems to be missing.

15.1.2 Who Is Eligible?

The empirical question concerning who is eligible for the various transport provisions has proven to be the most extensive and complex of the questions. This perhaps should be no surprise. Diane Sainsbury has stressed the importance of eligibility and citizenship rights, and Åsa Gunnarsson has specifically pointed to legal eligibility criteria as the most important aspect of defining a social citizenship in law. The legal criteria for eligibility to the right to transport in everyday life for people with disabilities can be summarized as pertaining to five dimensions of eligibility: impairment, age, time, space and purpose.

The legal construction of impairment is of great importance for deciding eligibility in all three countries. The criteria are focused on defining characteristics and setting limits for what can count as legitimate impairments, and thereby disabilities. The focus is especially strong on constructing impairments in relation to general public transport, as the lacking ability to travel by such transport is an important criterion for almost all provisions in the three countries. The law produces a huge number of detailed physiological criteria to be applied to people and their circumstances. Everything, from the distance to the nearest bus stop, to the person’s ability to walk this or that distance, to the person’s use of crutches, walkers, sticks etc is subject to legal criteria. In constructing psychological criteria the law is vaguer and usually much more restrictive. The legal construction of impairment can be understood as the opposite to an imagined typical general public transport passenger, and the result is a specific normative ideal: mobility impairment. This means that the legal criteria reinforce what could be called a wheelchair norm. People with tangible physical impairments, particularly if the impairments make the use of a wheelchair necessary, are more easily included under the criteria, than those with less tangible physical, or psychological, impairments. In Norwegian law, for example, applications from people with psychological impairments are questioned and scrutinized, Sainsbury 1996 and 1999 and Gunnarsson 2003, 2007a and 2007b.
and the people themselves referred to medical treatment in a manner which indicates that such impairments are often not viewed as legitimate.\textsuperscript{1154}

The age dimension of eligibility is best understood in conjunction with the impairment dimension. The legal construction of impairment is sometimes focused on drawing boundaries that exclude ailments and difficulties caused primarily by old age. The political discourse on disability in all three countries is usually very focused on compensatory efforts, regardless of age and impairment. However, in the law governing the transport provisions, age and age-related impairments are constructed as a form of infringement on the normative mobility impairments. Age as an infringement is particularly visible in car allowances. In Sweden there is a statutory cut-off point when the person reaches the age of 65, in Norway the impairment must have manifested itself before the age of 70, and in Denmark high age is being taken into account as a factor which in and of itself is deemed to reduce the need for car allowance in everyday life. Conversely, the legal criteria for eligibility for special public transport services, particularly in Sweden, simply avoid mentioning age altogether, and such services are thus constructed as a suitable and legitimate transport provision for old people with various impairments.

The legal construction of time as a dimension of eligibility is important for the scope of entitlements in all three countries. Regarding special public transport services this is reflected, for example, in criteria concerning the length of time for which an individual entitlement is valid, and for when journeys may and may not be made. In the case of car allowances the time dimension is important primarily for the normative lifespan of the vehicles, and thus for when the eligible person can be granted the benefit anew. The law in the three countries constructs a multitude of normal lifespans for a car: for example, six years in Denmark, nine years in Sweden, and eleven years in Norway. For the cash benefits the time dimension of eligibility is often connected with control, such as for how long benefits may be saved by the entitled person before they must be used, or expire. In Denmark, for example, statutory regulation states that the 15 monthly hours of escort for travel or, when applicable, the cash benefit reimbursing this, can be saved for up to six months, so that in a given month up to a maximum of 90 hours may be at the disposition of the eligible person. Any saving of hours from one month to another requires an agreement between the eligible person and the municipality regarding the details and the latter can issue regulations governing any saving.

The legal construction of space as a dimension of eligibility focuses on setting administrative boundaries, and is primarily important for the special public transport services. In these services, the administrative borders of the welfare state can govern how eligible people are able to travel in everyday life. In Sweden particularly and in Denmark the borders of municipalities are allowed to form the borders for everyday movement using the services. In certain areas, and often in Norway, it is instead the borders of the county or region which form the boundaries for everyday travel. The space dimension is visible in the same way in the cash benefits, so that it is more likely everyday journeys within the administrative borders to be legally constructed as journeys which should be eligible for benefits. In the eligibility criteria for car allowances space is not usually mentioned at all or, if mentioned, only in the broadest possible sense such as certain allowable exceptions for taking the car out of the country. In cash benefits, space criteria appear in the eligibility criteria but are less strict than those for special transport services. In cash benefits the legal criteria for space are also often constructed in conjunction with the criteria for the last dimension of eligibility: purpose.

Purpose is a dimension constructed exclusively on moral grounds, as an ethical basis for legitimate eligibility. People with disabilities must have a proper purpose if they are to be eligible, especially for car allowances or cash benefits for transport. In all three countries, the various purposes for everyday journeys are constructed as the normative ideals of going to and from morally acceptable and commendable activities. The ideological influences from the disability normalization of the 1960s and 1970s are visible in the legal construction of purposes. Moral ideas about what activities are coherent with, and pertinent to, an understanding of a good life are at the core of these constructions. Going to and from education, activities organized around physical pursuits, or to promote health, are more or less always constructed as good purposes, as are going shopping for everyday needs, and keeping in touch with family and friends. One purpose stands out above all others as a legal criterion for eligibility: work. For example, going to and from work is specifically mentioned in statute law governing car allowances in all three countries as an exceptionally worthy purpose. If a person needs car allowance to get to and from work, no other purpose needs to be stated or is even relevant. On the other hand, free leisure time with no specified activity, going out into the countryside without any organizational framework, or going to rallies and meetings, or to civic or political activities, are often not constructed as good purposes. Those activities require a strongly articulated need if they are to be considered acceptable in car allowance law. Certain activities might never be acceptable purposes at all, if they can be understood to counter moral perceptions of what people with disabilities should do in their everyday lives. In this way, morals become an important part of the possibilities for going out
and about in everyday life. It is likely that the need to have traveling legitimized by a morally good purpose impacts individual possibilities and life choices. Work and education are encouraged as those human activities are given preference in relation to others, on moral grounds. In this way, individual autonomy bows to a collective morality, embodied in legal constructions of purposes based on perceptions of a working and well-educated citizen living a good life.

In the special public transport services, purpose as a dimension of eligibility is somewhat differently constructed. The individual purpose for each journey is less relevant, but instead the law governing the services constructs purpose collectively. Instead of evaluating the individual purposes of the journeys, entire sections of society, such as healthcare or certain institutions, are kept outside the scope of eligibility for the services. From the perspective of individual autonomy, the legal eligibility criteria concerning purpose do grant people using special public transport services somewhat greater individual autonomy and freedom, compared to car allowances and cash benefits, regarding each journey within the pre-determined boundaries, but the criteria also set up total restrictions for purposes outside the boundaries of the services.

The dimension of purpose is problematic from the perspective of equality of treatment and anti-discrimination. It is entirely possible to randomly ride general public transport, or to take private journeys in a car, either with no specific purpose, or with one which is not morally commendable. As was mentioned in Chapter 1, Article 20 of the UN Convention on the Rights of Persons with Disabilities specifically declares that the states shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including facilitating the personal mobility of those with disabilities in the manner and at the time of their choice. It is very hard to see how legal eligibility criteria based on morally commendable purposes conform to the Convention.

15.1.3 Impact of Funding

The empirical question regarding the impact of funding on the strength of individual rights represents one area where there seems to be a significant comparative difference between the countries. Although any transport provision in any Nordic welfare state ultimately needs politically determined funding, Denmark stands out from the other two countries as Danish rights are comparatively better protected from budgetary concerns. In the special transport services and the benefit escort for travel, Danish protection is based
on statutory minimum levels. For car allowance the yearly increase is indexed by the national rate adjustment for the entire Danish state, and for cash benefits, with the exception for contribution for travel by individual means of transport, the national government and the various municipalities share the costs, and the actual individual expenses make up the basis for the benefit, which also protects it. Danish individual rights, in total, are therefore comparatively independent of budgetary concerns. In contrast, the Swedish and Norwegian rights are comparatively less well protected. The Swedish rights to car allowance and special transport services, and the Norwegian right to special transport services, are all comparatively weak and unprotected against both short- and long-term budgetary concerns. For example, the Swedish car allowance law includes a statutory regulation explicitly stating that the benefit is only available within appropriated funds. Neither Sweden nor Norway have any statutory minimum standards, nor is the level of any provision in Sweden and Norway protected by indexing.

15.1.4 Who Is Obliged to Provide?

The answer to the empirical question of who is obliged to provide benefits or services is dependent upon the type of transport provision. In short, there are clear similarities between the countries and clear differences between provisions. For the special transport services, while the municipality or region is formally obliged to provide in all three countries, private bus and taxi companies are the organizations which actually perform the services. This has complex effects on individual rights. The eligible person is, to a certain extent, both citizen and customer and to a certain extent neither. As the public authority, and not the eligible person, is usually the contracting party with the transport company, the legal position of the eligible person in relation to the private company is more similar to that of goods, which are to be transported from one point to another, than to a general public transport passenger who is usually an independent contracting partner with the transport company, albeit within the framework of public procurement and standard contracts. At the same time, the legal position of the eligible person in relation to the public, is still that of a citizen claiming a service from the public, even while traveling with a private transport company.

Who is obliged to provide is a complex question also regarding car allowances, but the legal construction of car allowances makes the answer somewhat less complicated compared with the special transport services. In car allowances, except for category 2 in Norway, the eligible person has to deal with both the public authority, which grants the benefits, and private companies, such as car
dealerships and workshops. However, because of the legal construction, where car allowances usually come as a cash contribution to the eligible person, he or she is a citizen in relation to the public, and more often perceived as a regular customer and contracting party in relation to the private company. In category 2 car allowance in Norway the public authority provides the adapted and adjusted vehicle rather than a cash contribution, and the eligible people therefore do not need to have any relations with private dealerships or workshops.

15.1.5 Legal Guarantees for Entitlements

Regarding the empirical question of legal guarantees for the benefits and services, the main significant difference is between benefits which the national government is obliged to provide, on one hand, and services and benefits which the municipalities, counties or regions are obliged to provide, on the other. Benefits from the national governments carry statutory regulated rights to appeal to administrative courts, which have full discretion in the appeals. When services and benefits are to be provided by a municipal or regional authority, the interest of local or regional self-governance immediately comes into competition with the individual right to appeal to administrative courts. The municipal and regional benefits and services can, therefore, be positioned on a scale from no right to appeal at all, which makes the self-governance stronger and the individual right weaker, via limited appeals, to statutory regulated rights to appeal to administrative courts which have full discretion in the appeals, thus limiting self-governance and strengthening individual rights.

The Danish special public transport services and the benefit contribution for travel by individual means of transport have no right to appeal at all, and are therefore examples of one extreme end of the scale, with strong regional and municipal self-governance and limited individual rights. The Norwegian special public transport services is the only provision in the thesis with a limited right to appeals, as complaints can be directed to a complaints office on either the municipal or county level. The complaints offices are not independent of the authorities which made the first decision, or from budgetary concerns, and final decisions from the complaints offices cannot be appealed further. On the whole, the limited appeals are closer to the end of the scale with strong regional and municipal self-governance and a limited individual right. The Swedish services and the Danish benefits, apart from contribution for travel by individual means of transport, have statutory, regulated rights to appeal to administrative courts which have full discretion.
in the appeals. Nevertheless, the regional and municipal self-governance is an interest which is weighed against individual rights in the administrative courts. In conclusion, if transport services or transport benefits are provided by local or regional authorities, regional and municipal self-governance is a factor which, at least to some extent, will impede the exercise of strong individual claim-rights.

15.2 A Social Citizenship in the Law Governing the Right to Transport in Everyday Life for People with Disabilities

The normative structures in the three countries lead to the identification of three types of ideal citizens, constructed by law, which together shape a social citizenship in law, and which are visible in all three countries: the ideal, working, disabled citizen, the ideal, elderly citizen with age-related impairments, and the ideal citizen with major impairments. These three ideal citizens, and some of the consequences for those who fall outside the scope of these ideal constructions, will be discussed below.

15.2.1 The Ideal, Working, Disabled Citizen

Regardless of impairment there is a strong emphasis in the normative sources, especially on car allowances, to make sure that the transport provisions will help enable people to commute to work and to gain and keep employment. The ideal, working, disabled citizen is thus constructed as self-supporting, salaried, and working, with a medium-sized lasting impairment, in the sense that the impairment must not be so extensive as to make it impossible for the citizen to work on the regular labor market, but, on the other hand, must still be lasting and cause sufficient difficulties in traveling by general public transport, to meet the impairment eligibility criteria. This ideal, disabled citizen is as an ideal, legitimate eligibility for car allowances and, in Denmark and Norway, also for cash benefits.

Finding the right balance between an impairment sufficiently severe to warrant eligibility, and yet allow the citizen to compete on the labor market can be problematic. In one Danish case a man with severe chronic back pain and an ability to walk 200 meters before the pain overwhelmed him was granted car allowance in the final instance. In another Danish case a

1155 Case O-2-00 National Social Appeals Board.
functionally one-armed woman who also had problems in one leg was denied car allowance with the argument that she could travel well enough by general public transport even though it was understood that it was difficult for her.1156

In all three countries work is explicitly mentioned in the legislation on car allowance as a criterion for eligibility. Regarding the legislation on special public transport and cash benefits work is not, however, specifically mentioned as an eligibility criterion. Only in Section 9 of the Swedish Special Transport Services Act is there a convoluted reference to work-related journeys as such journeys which are considered essential to the entitled person. There are historical reasons for these differences, car allowance originated in efforts to support working men, while special transport and cash benefits originated as social services and benefits. The ideal, working, disabled citizen is therefore the most important construction behind car allowances in the three countries, and the ideal, working, disabled citizen is the basic rationale for car allowance law.

In the law governing car allowance work can mean three things: salaried employment on the regular labor market; work in one’s own privately owned company; or education with the objective of improving one’s position on the regular labor market. Among those things not considered work are: unsalaried care work, for example in the family; unsalaried work in civil society, for example in disability organizations, other NGOs or political parties; or any work which is not necessary to provide for oneself. Because of the cut-off points in car allowance law around common perceptions of general retirement age, 65 (Sweden), 70 (Norway) or thereabouts (Denmark), the ideal, working, disabled citizen can be understood to always be of working age. Problems arise when people do not fit the ideal construction. In a Swedish example, a retired woman had a supplemental income from salaried work. While she unquestionably needed a car for this work, she was still refused car allowance on the ground that the supplemental income was too small to meet the criterion of substantially providing for oneself through work.1157

Like any ideals constructed by law, the ideal, working, disabled citizen is problematic in relation to actual people with disabilities who need transport in their everyday lives. That the ideal, working, disabled citizen is prominent mainly in the law on car allowance, but not in the law on special public transport, means that medical diagnoses and types of impairments become very important in determining the people who may be included in the perceptions of ideal citizens. Visual or cognitive impairments, for example,

1156 Case C-37-00 National Social Appeals Board.
1157 Case RÅ 1997 ref 55.
often make driving a car impossible. One consequence of this is that the transport needs of people with visual or cognitive impairments will often not fit with the construction of the ideal, working, disabled citizen.

In effect, the construction of the ideal, working, disabled citizen is wheelchair-shaped. As this ideal is mainly relevant for the right to car allowance, and to a certain extent, in Denmark and Norway, for the right to cash benefits, a vital part of the construction is a citizen who can easily drive a vehicle. Included in this ideal is the technology that allows a private car to be adapted to a driver with fully functioning head and arms, or alternatively fully functioning head and legs. Any technology that could adapt a private car to be driven by people without sight, for example, is excluded and cannot constitute a part of this ideal. The wheelchair-shaped ideal, working citizen is understood to be of working age with a visible physical impairment but who is otherwise healthy. As any person who at some point might fit into this normative ideal gets older, and develops more complex impairments, they gradually cease to fit the normative ideal, and eventually fall entirely outside the scope of the ideal construction. The absence of an ideal citizen who works or studies but does not drive a car, also means that, for example, people with visual or cognitive impairments who are of working age and active on the labor market, or studying, or are simply generally active in society will always fall outside the scope of this ideal construction.

15.2.2 The Ideal Elderly Citizen with Age-related Impairments

Just as the construction of the ideal, working, disabled citizen is the rationale behind the law on car allowance, so is the ideal elderly citizen with age-related impairments the rationale behind the law on special public transport services. The ideal elderly citizen with age-related impairments is constructed as a citizen who has retired from the labor market and who, due to old age, has acquired mobility impairments which make traveling by general public transport difficult. Because of the old age, the impairments, and a retired lifestyle in general, the ideal, elderly citizen with age-related impairments is constructed as not needing to travel very frequently, and also as being rather flexible about when to travel.

The Danish statutory requirement regarding individual transport services for people with severe mobility impairments, of a minimum of 104 one-way journeys as close to the front door as possible must be understood against this rationale. One return journey per week is considered quite sufficient to meet the transport needs for this ideal, elderly citizen. The very considerable
municipal self-governance under the Swedish statutory regulation, and the complete lack of such regulation in Norway, coupled with complete regional self-governance, must also be understood against this rationale.

The ideal, elderly citizen with age-related impairments is therefore constructed by law under the ideological assumptions that there is no need for strong individual transport rights. Norway lacks both statutory regulation of special public transport and most of the possibilities to appeal a decision. Denmark has a statutory regulation with a minimum standard, but lacks any possibilities to appeal. Sweden alone has both statutory regulation and the possibilities to appeal a decision, but the Swedish administrative courts typically defer to municipal self-governance and are reluctant to interfere with the details and limitations of entitlements.\textsuperscript{1158} As a consequence there is a limited amount of case law on special public transport provision from Sweden, and none at all from Denmark and Norway.

The legal construction of the ideal, elderly citizen with age-related impairments is perhaps best understood in contrast to what that ideal citizen is not: namely a perceived general public transport passenger. Such a passenger would probably be considered able to independently determine when and where to go, and choose freely and rationally among the range of available public and private transport options within the community. The ideal, elderly citizen with age-related impairments, in contrast, is expected to use only the special transport option determined by the municipality or county, at a pre-booked time which may have to be set days in advance. The general public transport passenger could also decide independently if they wanted to travel with someone else, be it a spouse, a friend, a child or a total stranger. The ideal, elderly citizen with age-related impairments is not so constructed as to have that competence, and can only travel with someone else if the municipality or county has specifically allowed it. The general public transport passenger could also be expected to have the ability to decide autonomously where to go. Conversely, the ideal, elderly citizen with age-related impairments is constructed by special transport law as having only the ability to travel to destinations which have been approved by the municipality or county. Destinations of a certain type, for example clinics or hospitals, may not be allowed as those destinations are supposed to be serviced by other systems of special transport, with their own set of rules. Destinations in certain places, for example outside the municipality, may also not be allowed.

\textsuperscript{1158} See for example Case 4377-11 Administrative Court of Appeal in Stockholm and Case 488-13 Administrative Court of Appeal in Jönköping.
In all three countries eligibility for special public transport and, in Denmark and Norway in certain instances also eligibility for cash benefits, is based on the nature of the impairment which has to be lasting and cause difficulties in traveling by general public transport. Special public transport is always defined in relation to general public transport. At least in geographically large and sparsely populated Sweden and Norway there are areas with no general public transport. Living there is not considered as having difficulties traveling by general public transport, but is instead considered as an individual choice, and is not in itself a criterion for eligibility for special public transport. The ideal, elderly citizen with age-related impairments is therefore of necessity tied to an urbanized environment with at least some level of public transport options available. This could be a result of what a recent research application into the living conditions for, among other groups, older people with disabilities in the Arctic and more peripheral parts of the Nordic countries, called the “urban context of welfare law”.  

In two Swedish cases, two older persons with mobility impairments were considered to have considerable difficulties in relation to getting to and from general public transport, but not to have considerable difficulties traveling by such means. Once at the bus stop, they were considered able to travel by the available general public transport. As such, they were granted services limited to journeys to and from the nearest bus stop.

In all three countries, and particularly in Norway, local self-governance creates differences in the legal criteria for eligibility for special public transport services. As the researcher Gisle Solvoll has shown in several overviews of the Norwegian services the local eligibility criteria can be changed, and stacked together, to construct sub-sets of criteria which almost dissolve any remaining individual general right to services. People of different ages, or with different impairments, might receive more or fewer journeys entirely depending on political priorities. Young people can be prioritized by the counties, or people with visual impairments, or people who are wheelchair-users or people with intellectual disabilities, etc. In certain counties the eligibility criteria also focus on the distance between the municipal center and the eligible person’s residence, so that people living less than 10 km from the municipal center receive fewer journeys, while those who are wheelchair-users and live further than 10 km away from the municipal center receive the highest number. When such residential criteria are stacked together with other criteria, such as age, or type of impairment, the result is

1159 Svensson, Burman & Wennberg 2015.  
1160 RÅ 2009 ref 74 I and II.  
that local decisions create sub-groups such as persons who need to travel by specially adapted vehicle, and who reside more than 15 km away from the nearest town and who are younger than 67 years. Or, for example, wheelchair-users under 40 years who reside more than 20 km from the nearest town center, and who have no car. Such normative constructions are at risk of becoming highly excluding, and are also at risk of making the possibilities for everyday journeys very unpredictable and arbitrary.

To fit into the normative ideal, elderly citizen with age-related impairments, a person has to be rather passive, with a limited need to go out and about in everyday life. As this ideal is mainly relevant for the right to special public transport services, and to a certain extent also for the right to cash benefits, a vital part of the legal construction is an ideal citizen who does not work, does not study and does not have any major commitments which require travel. The absence of an ideal citizen who travels to their work or studies using special public transport services means that the consequences of falling outside the construction of the ideal citizen can rather severely restrict one’s possibilities to travel.

That this is an interesting and important question can be seen in the yearly follow-ups of the Swedish disability policy. In these reports young people with disabilities say that the special public transport options limit their everyday lives and that they would like to travel more often and more extensively.\(^{1162}\) That young people do not fit into the ideal, elderly citizen with age-related impairments is perhaps not surprising, but it becomes all the more problematic if special public transport is the main transport possibility in their everyday lives. Such discrimination against young people with disabilities would mean that they are not given the same possibilities as their peers to participate in society.

Again, just as with the ideal, working citizen, people with visual or cognitive impairments who are of working age and active on the labor market, also do not fit well into the category of the ideal, elderly citizen with age-related impairments. People of any age and with any impairment who are active in civil society, or otherwise have interests or commitments outside their own homes, do not fit into this passive ideal citizen template either. For those who fall outside the scope of the ideal, elderly citizen with age-related impairments, the special public transport services reinforce a form of passive citizenship for people with disabilities.

\(^{1162}\) Myndigheten för delaktighet 2014a and 2014b.
15.2.3 The Ideal Citizen with Major Impairments

Unlike the other two normative ideal constructions of citizens, the ideal citizen with major impairments is not intimately connected to a certain type of transport provision. This construction should rather be understood as a complementary ideal construction which may become important through the law governing any transport provision. The ideal citizen with major impairments is constructed as very dependent on help from others. This ideal citizen is constructed as living in residences with a lot of available support, which can mean in a group home, a nursing home or a residential institution of some kind, as well as living on one’s own with either personal assistance of some kind or caring family members. The transport needs are not defined primarily by mobility impairments or purposes, but instead are mainly defined by the extensive need for adaptation, aid and support to be able to travel.

The defining feature of this ideal citizen is the need for a specially adapted vehicle to be able to travel at all. Regardless of provision, be it special public transport, car allowances or cash benefits, traveling by general public transport or ordinary private cars are precluded. The transport needs of this ideal citizen are generally seen as legitimate but expensive for the public. For this reason impairment-based eligibility criteria become less important, and instead cost-control-based criteria become more important. The category 2 Norwegian car purchase allowance is a good example of this: Section 3 of Executive Regulation 290 states that any applicant for car purchase allowance must substantiate that they have a real and considerable need for transport. However, it is understood that if there is a need for a category 2 vehicle, which is a specially adapted van, the person also more or less automatically meets the real and considerable need for transport criterion. Also, unlike category 1, the category 2 vehicle is, for all practical purposes, free of cost for the entitled individual. However, cost-control arguments are given a stronger legal validity in relation to this ideal citizen with major impairments. An example of the importance of cost-control criteria is the Danish supplemental loan for car purchase allowance. Supplemental loans are granted when the impairment necessitates adaptations that can usually only be made in bigger or more expensive cars, and suchlike. It is considered important when evaluating the need for a supplemental loan that the car shall be of use to the entitled person for a long period of time.

The ideal citizen with major impairments is above all else seen as a cost to the public, or even as a budgetary risk. The needs are generally considered legitimate but the perceived high costs motivate scrutiny and public control over individual preferences. A person who is granted a Norwegian category 2
car purchase allowance, for example, cannot go and purchase the vehicle they want. Instead they are assigned a vehicle which the public authorities deem appropriate, and which may or may not be a used vehicle.

Regarding the transport provisions, the operators of the welfare state, and the legal actors, including the administrative courts, allow budget arguments about costs to the public to become important legal arguments against individual rights. Such arguments would be unthinkable in many other legal fields. It is very hard to imagine the Nordic judiciary allowing public budget concerns to determine other issues of great importance for private individuals; for example, issues of criminal liability, the right to elementary education, or whether or not to apply the tax code in an individual case. In these instances the law rises above mere economic concerns. But regarding disability rights the perceived costs to the public becomes a legal argument which is taken seriously. This is a weakness and a deficiency in the legal understanding of social rights, which reflects a basic flaw in the ethical framework of solidarity in the Nordic welfare states.

The ideal citizen with major impairments is constructed with a perceived legitimate need for going out and about in everyday life, but this need must be controlled and restricted, for fear of incurring excessive costs to the public finances. In this way, the law on the right to transport in everyday life for people with disabilities supports and reinforces perceptions that the individual legal rights for people with major impairments can be conditional on economic resources and budgetary concerns.

15.3 Citizens or Customers? The Impact of Welfare State Legal Cultures on the Law Governing Special Public Transport Services

The legal and political origins of the special public transport services in the three countries were discussed in Chapter 4, and the legal cultures of the welfare states were discussed in Chapter 1. The normative structures of the law regarding special public transport services, and to a certain extent also the law concerning car allowances, in all three countries, as discussed above, reveal conflicting legal rationalities: are the eligible persons to be considered citizens or customers? The law on special public transport services in particular illustrates this dilemma. The Swedish services originated in social law, based on the rationalities of the social service state. Gradually the services have lost these rationalities, and are now described as belonging with
public transport law, based on the rationalities of the \textit{EU state}. The Norwegian services, like the Swedish, started out as an idea and initiative inspired by \textit{social service state} rationality, but implementation has shaped the services as a transport measure, governed by \textit{EU state} rationalities. The Danish services started out as a transport law measure from the very beginning and have always been more shaped by \textit{EU state} rationalities. The consequence is that when people become entitled to use the services, they become entitled to be customers of passenger transport companies. But this entitlement to be a customer is devoid of many traditional legal characteristics of an ordinary customer. One feature of the customer is to be able to freely enter into a contract with a seller. But in special public transport there is usually little choice as to which transport company can be used. Rather, the entitled person is assigned to the use of a specific company or a pool of companies. In the same way, the ideal ability of the customer to agree upon details of service is lacking. The contract which matters is typically not an agreement between the entitled person and a company. Rather, the important contract is the procurement or suchlike of special public transport which has been put in place by a public agency. Even if transport companies refer to their special public transport passengers as customers, the normative capabilities of their customers, including the main financial compensation for services, rests rather with a procurement public agency.

Another consequence of the \textit{EU state} rationality of transport law and policy is that special public transport is only available to disabled people when and where there is general public transport available to the public. This means that the legal compensation principle, discussed in Chapter 2, gives way to a purely formal equal treatment principle. Under the formal equal treatment logic of the \textit{EU state}, services can be refused, regardless of need and impairment, because private companies or procurement public agencies have chosen, for whatever reason, not to have general public transport running in an area. The formal equal treatment rationality places the burden of finding solutions to everyday transport problems solely on the individual. Moving away from one’s home may become a necessity under the \textit{EU state} rationality, if one wants to have access to any kind of public transport. This has an impact on people with disabilities living in areas where general public transport is not commercially viable, which are potentially large areas of, at least, Sweden and Norway. For those people, freedom to travel might thus be transformed into pressure to move to a city.
15.4 The Trade-off between Collective Legitimacy and Individual Autonomy – the General Relativity Theory of Framework Law

The results of this thesis on the right to transport in everyday life for people with disabilities hopefully adds something to common knowledge about Nordic disability law and social law. When taking these results into account, together with the results of other legal scholars, which are discussed in Chapters 1 and 2, I am certain that it is also possible to say something on a larger scale about Nordic social law, and especially the framework law which is so intimately connected with the Nordic welfare states. The legal criteria of the law governing transport in everyday life for people with disabilities, and the social citizenship in law which they shape, taken together with other legal scholars’ understandings of framework law, reveal that the perceptions of social justice in the Nordic countries are closely connected to the legitimacy of the welfare states, and have a strong redistributive focus.

I am now going to present two theories: the general relativity theory of framework law, about the trade-off between collective legitimacy and individual autonomy, and the special relativity theory of framework law, about the consequences for legal research of the general relativity theory. Åsa Gunnarsson and Eva-Maria Svensson point out that it is not clear exactly what a theory of law is, or ought to be, and it can mean very different things.1163 These two relativity theories are hybrid hypotheses, as in assumptions about how things are (in this case the framework law of the Nordic welfare states), and models of explanation.

Legitimacy in the welfare states is intimately linked to redistribution. The redistributive efforts must be perceived as legitimate, thus reaffirming the social justice of the welfare states, for the system to work. Without legitimacy the willingness to pay the taxes which finance the redistribution would presumably decline, and the trust in the states would vanish. This creates a troublesome problem in the context of disability provisions in the Nordic welfare states. One important normative objective for the transport provisions is to empower people with disabilities in their everyday lives, and increase individual autonomy over everyday decisions. The goals are to increase equality and increase their participation in society on equal terms. Nancy Fraser has described participatory parity as a standard to which such normative objectives can be compared, and she has emphasized that both redistribution and recognition are needed for participatory parity.1164

---

1163 Gunnarsson & Svensson 2009, p 122 f.
1164 Fraser 2013, p 164.
In the Nordic welfare states redistribution is both very important and clearly visible. The legal transport provisions in this study are good examples of strong redistributive and compensatory efforts. Material services and benefits are transferred from public agencies to individuals who meet the eligibility criteria. The idea is that, through these redistributive efforts, the welfare state objectives of equality and increased participation can be met. The legal construction of eligibility criteria fills the presumably important function of making certain that legitimacy is upheld, and that trust in the state can be maintained among the public.

In this thesis parity of participation and social justice have been useful, in the sense that both redistribution of material resources and recognition of cultural values, such as individual autonomy and equal participation, need to be addressed and present if the law governing the right to transport in everyday life for people with disabilities is to have any claim to legitimacy. However, recognition is a much more troublesome concept than redistribution in the welfare state context, as discussed in Chapter 1. Recognition has its roots in cultural and symbolic values, which makes it harder to fit it into a context used only to material redistribution. So the question is, which the symbolic values are in the law on transport in everyday life for people with disabilities in the welfare states. The answer is probably along the lines of those cultural and symbolic values associated with a general public transport passenger, and a private car owner. Recognition, then, means that the individual is able to make autonomous choices concerning when, where and with whom to travel. The general public transport passenger travels more or less freely and affordably according to set timetables. The private car owner is perceived as even more autonomous, and has a full range of choices about traveling.

Nancy Fraser states that recognition, or lack of it, is best understood as a status in society. But if recognition is to be understood in this way, then law must first be able to recognize status. This is a problem in the law concerning the right to transport in everyday life for people with disabilities, and in disability law generally. People with disabilities are only recognized as people with disabilities when and if they meet the legal criteria for eligibility. There is no disability status in law outside the scope of entitlements to what the law provides. And the legal constructions are entirely focused on maintaining legitimacy for the redistributive side of social justice. The status of disabled persons is therefore not recognized, unless the redistribution requires them to be subsumed under legal constructions of ideal, sufficiently disabled, citizens. This is also a problem for framework law in general, as it is not designed to handle misrecognition, even if the status of misrecognition is unambiguous.

1165 Fraser 2008 and 2013, p 168.
Framework law is designed to handle redistribution, and the only possible response in framework law to lingering problems is to increase the redistributive efforts.

The status of misrecognition in the law governing the right to transport in everyday life for people with disabilities is signified by the level of autonomous choice available to eligible people. When the law recognizes a lack of individual autonomy, such as a lack of available transport in someone’s everyday life, the solution is to increase the redistributive efforts. These redistributive efforts require the individual to go through an evaluation and screening process, the aim of which is to subsume the person under legal criteria of a sufficiently ideal, disabled citizen to be able to receive the redistributive provisions. However, subsuming people under the legal constructions destroys individual autonomy. The process upholds legitimacy in the welfare state by requiring the individual to open every aspect of their life to screening and judging. There is no privacy allowed on the legal construction site. Medical records, relations, hobbies and interests, daily activities, family and friends, are all subject to evaluation. And even if the process goes well, and the person is considered to fit into an ideal, disabled citizen, the redistributive provisions of the welfare state still do not have any mechanisms to ensure recognition and autonomy. If the solution to the autonomy problems is to entitle the person to use special transport services, the autonomy-consuming process has made the person eligible for an entitlement to use services which do not reinforce individual autonomy. The eligible person may have to face problems on an everyday basis never faced by a general public transport passenger. Decisions about when, where and with whom to travel, may not be made by the eligible person. If the solution to the autonomy problems is instead to entitle the person to car allowance, the person will fare better regarding certain aspects of individual autonomy, but will still face problems never faced by most private car owners. Decisions such as which car to buy, when to replace it, which insurance to take, or how to equip the car, are not necessarily made by the eligible person.

The effects of these problems have an impact on people’s everyday lives, and they are arguably also generic in that they occur in all provisions governed by framework law. These effects, the constant trade-offs between individual autonomy and collective legitimacy, form the general relativity theory of framework law in the Nordic welfare states. Due to its inability to handle matters of recognition, there is in the framework law an inevitable trade-off between individual autonomy and collective legitimacy. If one is strengthened it will be at the cost of the other. This is a situation which can only be changed, and remedied, by making the cultural and symbolic values of law visible and valuable in the political and legal decision-making processes. As long as the
trade-offs are in effect participatory parity, which is the deeper meaning of the law and the policy objectives of equality, cannot be realized, regardless of increases and efforts concerning redistribution.

15.4.1 Future Research – the Special Relativity Theory of Framework Law

In the light of the general relativity theory of framework law some conclusions can also be drawn regarding future legal scholarship in the fields of disability law and social law. As was discussed in Chapter 2, the framework law is a distinctive feature of the legal cultures in the Nordic welfare states, and it is specifically designed to encompass normative change over time, without changing the legal form. When coupled with the universalistic ambitions of Nordic welfare state policies, this leads to the logical conclusion that, at any given time, social rights cannot be enumerated. There is always room for one more, because there is always room for change. At any given time, the number of social rights in framework law is therefore potentially infinite. With a potentially infinite number of social rights, the sources of law are also potentially infinite. The logical conclusion to this, is that the status of current law in the Nordic welfare state legal cultures can never be described. Only a selection, a sample, of social rights and sources of law can be described, at any given time.

The effects of this for legal scholarship regarding disability law and social law are not merely abstract, but are in fact quite tangible. The potential infinity of social rights ought to alert us to the power relations in the welfare states. An immediate consequence of the potential infinity is that it is always possible to change normative structures, through legal and political processes, to include something or someone who was previously excluded. A social citizenship in law is thus always a potential citizenship, its exclusion and inclusion limits can be, and are, subject to change. The idea of a set and fixed current framework law in the Nordic welfare state legal cultures is, therefore, not only impossible, but also unethical, because it serves to hide and conceal the power relations from analysis. Any attempt by legal scholarship to construct limits to framework law will inevitably set limits for an otherwise potentially expanding, and more inclusive, citizenship. Current disability law and social law are constantly evolving and developing. The major consequence for legal scholarship in the Nordic welfare state legal cultures is that the only possible ethical approach to welfare state law is an emancipatory approach. Any other approach will risk setting limits for the potential expansion of citizenship and social rights.
References

Official documents

Sweden


General Guidelines on Car Allowance RAR 2002:4 [Riksförsäkringsverkets allmänna råd (RAR 2002:4) om bilstöd till personer med funktionshinder].

Guidelines on Deductions for Work Journeys for Disabled etc 2008-12-12 [Skatteverkets ställningstagande 2008-12-12. Avdrag för arbetsresor för handikappade m.fl. Dnr 131 704346-08/111].


Prop 1973:153 Government’s Proposal on Changes to the Ordinance on VAT on motor vehicles in Certain Instances, etc [Kungl. Maj:ts proposition till riksdagen med förslag till ändring i förordningen (1956:545) angående omsättningsskatt å motorfordon i vissa fall, m m].


Prop 1983/84:100 Appendix 8 to the Government’s Proposal on the Budget 1984 [Bilaga 8 till budgetpropositionen 1984].

Prop 1987/88:99 Government’s Proposal on Improved Car Allowance to the Handicapped [Regeringens proposition om förbättrat bilstöd till handikappade].


Prop 1992/93:159 Government’s Proposal on Support and Service to certain People with Disabilities [Om stöd och service till vissa funktionshindrade].


Prop 2005/06:92 Government’s Proposal: Trials with Complements to Special Transport Services [Försöksverksamhet med komplement till färdtjänst].


Prop 2013/14:36 Government’s Proposal: Mobility Support as Alternative to Special Transport Services [Mobilitetsstöd som komplement till färdtjänst].


SOU 1946:24 Government’s Commission on the Partially Able Bodied [Kommittén för partiellt arbetsföra].

SOU 1966:9 Government’s Commission: Care and Services for the Developmentally Suppressed [Omsorger om psykiskt utvecklingshåmmade].


SOU 2003:87 Government’s Commission on Special Transport Services [Färdtjänstutredningens slutbetänkande].

Denmark


General Guidelines nr 7 of 15/02/2011. The Ministry of Social Affairs [VEJ nr 7 af 15/02/2011 Socialministeriet. Vejledning om hjælpemidler, biler, boligindretning mv. (Vejledning nr. 6 til serviceloven)].

General Guidelines nr 10 of 15/02/2011. The Ministry of Social Affairs [VEJ nr 10 af 15/02/2011 Socialministeriet. Vejledning om særlig støtte til voksne (Vejledning nr. 5 til serviceloven)].

General Guidelines nr 11 of 15/02/2011. The Ministry of Social Affairs [VEJ nr 11 af 15/02/2011 Socialministeriet. Vejledning om særlig støtte til børn og unge og deres familier (Vejledning nr. 3 til serviceloven)].


LFB 1992-04-01 nr 37 Appendix 27 to Parliamentary Committee Report on I. Proposal for Act on Changes to the Act on Local and Regional Public Transport outside the Capital Area, II. Proposal on Act on Changes to the Act on Capital Area Public Transport [Betænkning over I. Forslag til lov om ændring af lov om den lokale og regionale kollective personbefordring uden for
hovedstadsområdet, II. Forslag til lov om ændring af lov om hovedstadsområdets kollektive persontrafik. Bilag 27].


LFB 2010-05-11 nr 168 Parliamentary Committee Report on Proposal on Act on Changes to the Social Services Act [Betænkning over forslag til lov om ændring af lov om social service].


LFF 1997-04-16 nr 229 Government’s Proposal on Social Services Act [Forslag til Lov om social service].

LFF 2000-12-15 nr 137 Government’s Proposal on Act on Changes to the Social Pension Act and other Acts [Forslag til Lov om ændring af lov om social pension og andre love].

LFF 2005-02-23 nr 81 Government’s Remarks on Proposal on Act on Changes to the Act on Local and Regional Public Transport outside the Capital Area and the Act on Capital Area Public Transport [Bemærkninger til forslag til lov om ændring af lov om den lokale og regionale kollektive personbefordring uden for hovedstadsområdet samt lov om hovedstadsområdets kollektive persontrafik].

LFF 2010-01-27 nr 114 Government’s Proposal on Act on Changes to the Social Services Act [Forslag til lov om ændring af lov om social service].

LFF 2010-03-17 nr 168 Government’s Proposal on Act on Changes to the Social Services Act [Forslag til lov om ændring af lov om social service].


Parliamentary Resolution on Improving Traffic and Accessibility [B 137 Folketingsbeslutning 1987-05-12 om forbedring af trafik- og adgangsforhold].

Parliamentary Resolution on Individual Transport Services for People with Severe Mobility Impairments [B 60 Folketingsbeslutning 1991-05-07 om kørselsordninger for svært bevægelseshæmmede].


Norway


Circular Chapter 6 Norwegian Labor and Welfare Administration: Generally [NAV Rundskriv Kapittel 6 – Generell del].

Circular § 6-2 Norwegian Labor and Welfare Administration: Disease, injury or infirmity [NAV Rundskriv § 6-2 Sykdom, skade eller lyte].

Circular § 6-3 Norwegian Labor and Welfare Administration: basic benefit [NAV Rundskriv § 6-3 Grunnstønad].

Circular § 10-4 Norwegian Labor and Welfare Administration: Age [NAV Rundskriv § 10-4 Alder].


Circular § 10-7 Letter h Norwegian Labor and Welfare Administration: Acquisition of motor vehicle or other means of transport [NAV Rundskriv § 10-7 Bokstav h – Anskaffelse av motorkjøretøy eller annet transportmiddel. Utarbeidet av Rikstrygdeverket Hjelpemiddelkontoret 11.09.00. Sist endret 01.01.13 av Arbeids- og velferdssdirektoratet, Tjenesteavdelingen, Oppfølgingsseksjonen, Tiltakskontoret].


Ot prp nr 17 (1965-66) Government’s Proposal on Social Security Act [Om lov om folketrygd].


Ot prp nr 29 (1990-1991) Government’s Proposal on Social Services Act [Om lov om sosiale tjenester m.v. (sosialloven)].


European Union


Case Law

Sweden

Case 8339-03 Administrative Court of Appeal in Gothenburg
Case 6978-07 Administrative Court of Appeal in Gothenburg
Case 4160-09 Administrative Court of Appeal in Gothenburg
Case 5759-13 Administrative Court of Appeal in Gothenburg
Case 2965-02 Administrative Court of Appeal in Jönköping
Case 3638-07 Administrative Court of Appeal in Jönköping
Case 1009-09 Administrative Court of Appeal in Jönköping
Case 488-13 Administrative Court of Appeal in Jönköping
Case 1290-2000 Administrative Court of Appeal in Stockholm
Case 4069-02 Administrative Court of Appeal in Stockholm
Case 4800-02 Administrative Court of Appeal in Stockholm
Case 4002-07 Administrative Court of Appeal in Stockholm
Case 4377-11 Administrative Court of Appeal in Stockholm

Case 2670-04 Administrative Court of Appeal in Sundsvall

Case T 1459-05 Göta Court of Appeal

FÖD 1989:51
FÖD 1989:57
FÖD 1990:5
FÖD 1990:12
FÖD 1990:13
FÖD 1991:29
FÖD 1991:30
FÖD 1992:8
FÖD 1992:17
FÖD 1992:23
FÖD 1993:8
FÖD 1993:9
FÖD 1993:24

JO 2008/09 s 436

RÅ 1995 ref 49
RÅ 1996 ref 46
RÅ 1996 not 169
RÅ 1997 ref 55
RÅ 2000 ref 8
RÅ 2000 ref 24
RÅ 2002 not 211
RÅ 2006 ref 21
RÅ 2007 ref 27
RÅ 2008 ref 88 I and II
Case 3593-09 Supreme Administrative Court of Appeal
RÅ 2009 ref 74 I and II
RÅ 2010 ref 110

**Denmark**

Case O-121-95 National Social Appeals Board
Case O-57-98 National Social Appeals Board
Case C-10-99 National Social Appeals Board
Case C-11-99 National Social Appeals Board
Case C-25-00 National Social Appeals Board
Case C-30-00 National Social Appeals Board
Case C-37-00 National Social Appeals Board
Case C-42-00 National Social Appeals Board
Case O-2-00 National Social Appeals Board
Case C-6-01 National Social Appeals Board
Case C-36-01 National Social Appeals Board
Case C-9-02 National Social Appeals Board
Case C-26-02 National Social Appeals Board
Case C-32-02 National Social Appeals Board
Case C-37-02 National Social Appeals Board
Case C-47-02 National Social Appeals Board
Case C-17-03 National Social Appeals Board
Case C-44-03 National Social Appeals Board
Case C-45-03 National Social Appeals Board
Case C-58-03 National Social Appeals Board
Case C-2-05 National Social Appeals Board
Case C-8-05 National Social Appeals Board
Case C-34-05 National Social Appeals Board
Case C-50-05 National Social Appeals Board
Case C-2-06 National Social Appeals Board
Case C-4-06 National Social Appeals Board
Case C-8-06 National Social Appeals Board
Case C-25-06 National Social Appeals Board
Case C-26-06 National Social Appeals Board
Case C-27-06 National Social Appeals Board
Case C-31-06 National Social Appeals Board
Case C-36-06 National Social Appeals Board
Case C-47-06 National Social Appeals Board
Case C-48-06 National Social Appeals Board
Case C-1-07 National Social Appeals Board
Case C-2-07 National Social Appeals Board
Case C-39-07 National Social Appeals Board
Case C-29-08 National Social Appeals Board
Case C-42-08 National Social Appeals Board
Case 221-09 National Social Appeals Board
Case 223-09 National Social Appeals Board
Case 260-09 National Social Appeals Board
Case 27-10 National Social Appeals Board
Case 28-10 National Social Appeals Board
Case 29-10 National Social Appeals Board
Case 30-10 National Social Appeals Board
Case 58-10 National Social Appeals Board
Case 59-10 National Social Appeals Board
Case 60-10 National Social Appeals Board
Case 74-10 National Social Appeals Board
Case 82-10 National Social Appeals Board
Case 98-10 National Social Appeals Board
Case 121-10 National Social Appeals Board
Case 129-10 National Social Appeals Board
Case 132-10 National Social Appeals Board
Case 166-10 National Social Appeals Board
Case 168-10 National Social Appeals Board
Case 210-10 National Social Appeals Board
Case 232-10 National Social Appeals Board
Case 257-10 National Social Appeals Board
Case 45-11 National Social Appeals Board

Norway

HR 2010-1533-A

LA 2003-1518

LB 2001-2590
LB 2002-626
LB 2011-117542

LF 2007-36191
LF 2009-89224

LG 2003-53937
LG 2005-140297
LG 2008-50914

LH 2005-182853
LH 2007-179853

Sak 2006/1280 Sivilombudsmannen

TRR 2000-1617
TRR 2000-2335
TRR 2000-4948
TRR 2001-2210
TRR 2001-3547
TRR 2001-3566
TRR 2002-2288
TRR 2002-3387
TRR 2003-1786
TRR 2003-2660
TRR 2003-5297
TRR 2008-32
TRR 2008-148
TRR 2008-204
TRR 2008-1646
TRR 2008-1954
TRR 2008-1962
TRR 2008-2155
TRR 2009-241
TRR 2009-288
TRR 2009-357
TRR 2009-600
TRR 2009-609
TRR 2009-636
TRR 2009-726
TRR 2009-757
TRR 2009-775
TRR 2009-970
TRR 2009-1087
TRR 2009-1394
TRR 2009-1428
TRR 2009-1692
TRR 2009-1736
TRR 2009-1841
TRR 2009-2029
TRR 2009-2119
TRR 2009-2268
TRR 2009-2269
TRR 2010-173
TRR 2010-294
TRR 2010-384
TRR 2010-1073
TRR 2010-1525
TRR 2010-1913
TRR 2010-2071
TRR 2010-2072
TRR 2010-2176
TRR 2010-2214
TRR 2010-2297
TRR 2010-2317
TRR 2011-81
TRR 2011-179
TRR 2011-183
TRR 2011-196
TRR 2011-405

335
TRR 2011-462
TRR 2011-962
TRR 2011-1366
TRR 2011-1912
TRR 2011-2048
TRR 2011-2278
TRR 2011-2339
TRR 2011-2365
TRR 2011-2455
TRR 2011-2628
TRR 2012-20
TRR 2012-1284
TRR 2012-1315
TRR 2012-1396
TRR 2012-1644
TRR 2012-1814
Literature


Bäckman, Therese (2013) Gynnande besluts negativa rättskraft och rättssäkerhet för människor med funktionsnedsättning inom rättsområdena SoL och LSS (Gothenburg: Gothenburg University).


Svensson, Eva-Maria, Burman, Monica and Wennberg, Lena (2015) *Nordic Centre of Excellence in Research on Gender Equality in the Arctic (NCoE-GEA) Research plan – Toward a Gender Equal Human Development in the*


357


Internet based references

Commission of the European Communities


NAV Transport gruppe 1
<www.nav.no/Helse/Hjelpemidler/Bil+og+transport/Transport/Personbil+(gruppe+1).1073751516.cms> accessed 1 August 2013.

NAV Transport gruppe 2

NAV Vedlegg 1 til kapittel 6 - § 6-3 Satser
<https://www.nav.no/rettskildene/Vedlegg/Vedlegg+1+til+kapittel+6+-+%C2%A7+6-3+Satser.104218.cms> accessed 13 September 2013

Socialstyrelsen


Statistisk sentralbyrå – Statistics Norway

Sveriges officiella statistik