

# REHABILITATION AND PARTICIPATION OF DISABLED PERSONS (LAW STATED AS OF 1 JANUARY 2004)

- 1** Disabled persons and persons who are in danger of becoming disabled can naturally claim, in the first instance, the same social benefits and types of assistance available to other citizens; the relevant stipulations apply equally to this group of persons. This principle is reinforced by Article 3 (3), clause 2, of the Basic Law which provides that no one may be prejudiced because of his disability. As an individual basic right, this provision is directly binding on legislature, executive power and jurisdiction, not only at the Federal level but also in the Länder and municipalities as well as in other institutions and organisations exercising „public authority“. The legal relations between private persons are indirectly affected by the ban on prejudicial treatment in so far as it has to be taken into account in the interpretation and application of civil law.
- 2** The following text deals with additional special regulations of social law which are deliberately aimed at the self-determination of disabled persons and persons who are in danger of becoming disabled and their equal participation in the life of society. If, for example, retraining measures for a new occupation are necessary because there is no need for the former one on the labour market, disabled persons are entitled to the same benefits under the same conditions as non-disabled persons under Book 3 of the Social Code. However, if retraining becomes necessary as a **result of disability**, this retraining is considered to be part of the benefits to promote participation in working life and includes **special** modalities for support, if necessary.
- 3** The special social law regulations for disabled persons and persons who are in danger of becoming disabled have been consolidated and further developed by means of Book 9 of the Social Code - Rehabilitation and Participation of Disabled Persons - with effect from 1 July 2001. Section 1 of this Book provides that disabled persons and persons who are in danger of becoming disabled receive benefits under this Book and under the benefit laws applicable to the rehabilitation funds in order to promote their self-determination and equal participation in the life of society and to avoid or counteract any discrimination. The special needs of women and children who are disabled or in danger of becoming disabled are taken into account.

**4** The provisions of the Act on Equal Opportunities for Disabled Persons which entered into force on 1 May 2002 are not part of social law in the narrower sense. Their purpose is to implement the ban on discrimination also in areas other than social law and to help ensure equal rights for disabled persons in many areas of public and private life and their practical everyday implementation. To this end, the Act includes general provisions on

- the ban on discrimination for public authorities,
- taking account of the special needs of disabled women/gender mainstreaming,
- the definition of disability and barrier-free environments,
- target agreements to establish barrier-free environments,
- the obligation of the Federal Government to construct barrier-free buildings,
- sign language and the disability-suited design of notices in administrative procedures,
- barrier-free information technology,
- the right of associations to take legal action

and on the establishment of a legal basis for the office of the Federal Government Commissioner for Matters relating to Disabled Persons; it also includes regulations on the implementation of equal opportunities and the establishment of barrier-free environments in the fields of

- the Federal and European elections,
- the conveyance of passengers in local public transport, by rail and air, also by means of financial assistance from the Federal Government only for barrier-free transport projects,
- accessibility and usability of restaurants,
- equal opportunities for university studies,
- non-discriminatory wording of profession-related regulations.

## DISABLED PERSONS

**5** According to section 2(1) of Book 9 of the Social Code, „**disabled persons**“ are persons whose physical functions, mental capacities or psy-

chological health are highly likely to deviate for more than six months from the condition which is typical for the respective age and whose participation in the life of society is therefore restricted. This definition which follows proposals of the World Health Organisation is not based on real or supposed deficits; it is the aim of participation in the different areas of life which is in the foreground. A deviation from the „typical condition“ means the loss of or restrictions with regard to physical, mental or psychological structures which are normally present at the respective age. A disability exists if this impairment leads to a participation restriction which affects one or several areas of life. The requirement of a probable duration of the restriction of six months does exclude temporary irregularities but not interventions to be taken as early as necessary in individual cases; this applies in particular if children are already disabled or in danger of becoming disabled.

**6** The same deviation from the age-typical condition and the same functional restriction can lead to very different **participation restrictions**; the loss of the left middle finger would hardly prevent a civil servant from exercising his occupation, however, it is of very serious consequence in the case of a violinist. Even severe impairments and limitations do not normally have the same effects in all areas of life; a person with health impairments suffers only from certain functional restrictions which means that he is „disabled“ only in respect of certain activities and areas of participation, whilst his performance and participation capacity may be undiminished or even unusually high in other areas of life. Accordingly, it is important to first consider a person’s individual **abilities**, and to keep in mind that the individual assistance required by disabled persons may differ greatly, even though the restrictions may be the same.

**7** **Severely disabled persons** are disabled persons whose degree of disability is at least 50 and who either lawfully stay in the Federal Republic of Germany, have their ordinary residence here or are employed here (section 2(2) of Book 9 of the Social Code). At the end of 2001, 6.7 million persons were severely disabled in Germany; this corresponds to a share in the population of about 8 per cent.

#### PROPORTION OF SEVERELY DISABLED PERSONS IN THE RELEVANT AGE GROUP OF THE POPULATION (STATE OF 31 DECEMBER 2001)

Years	0-14	15-24	25-44	45-64	over 64
per cent	1.0	1.48	2.76	10.72	24.70

- 8** These special, very varying forms of support and assistance, depending on the type or severity of the disability, which disabled persons require in order for them to participate in working life and the life of society are not in general dependent upon whether a (severe) disability has been formally ascertained. The existence of a disability is rather one among several criteria determining eligibility for benefit and is subject to examination by the responsible rehabilitation fund when it decides on the granting of social benefits. The **identification of the degree of disability** by a formal procedure provided for by the law on severely disabled persons (Part 2 of Book 9 of the Social Code) is only relevant for the **special forms of assistance and rights** specified there (for details see no. 92-107) and for tax and other compensation for disadvantages.
- 9** It is important that definitions should not further the mental and social exclusion of disabled persons, but instead should serve as an indication of their individual problems and opportunities, and also indicate how each person can gain access to the assistance which they require for their participation in the life of society. The aim is also to realise the degree of progress and the standards achieved by individual groups of disabled persons for other groups as well and to help enable all disabled persons and their families to lead **a life which is „as normal as possible“**.

## PARTICIPATION-ORIENTED BENEFITS

- 10** According to section 4(1) of Book 9 of the Social Code, participation-oriented benefits include social benefits which are necessary
1. to avert, eliminate, or alleviate a disability, to prevent its aggravation or to reduce its effects,
  2. to avoid, overcome or alleviate reductions in earning capacity or the need for long-term care or prevent an aggravation and to avoid the early receipt of other social benefits or reduce social benefits that are paid,
  3. to secure a permanent participation in working life in accordance with a person's inclinations and abilities, or
  4. to promote an individual's personal development in a comprehensive approach and enable or facilitate his participation in the life of society and a living as autonomous and self-determined as possible;
- these benefits are granted irrespective of the cause of the disability. A corresponding provision is laid down in section 10 of Book 1 of the Social Code as a „social right“ to be observed in all social benefit areas.

## 11

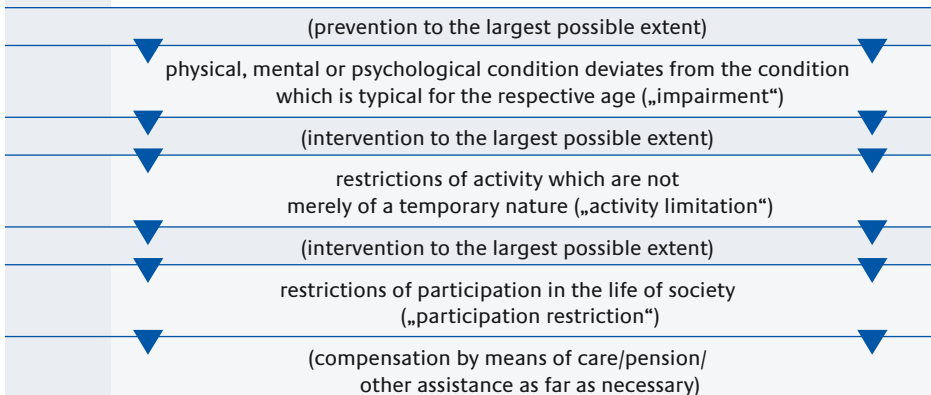
These requirements do not only help to interpret and apply social law but are also recognised generally as the guideline for disability policy in the Federal Republic of Germany. Of the principles derived from them, the following require special emphasis:

- the aim of **participation**, based on self-determination and individual responsibility, of disabled persons in the life of society,
- the principle of **finality** according to which the necessary assistance must be offered to every disabled person and person who is in danger of becoming disabled, regardless of the cause of their disability, even when responsibility for this assistance is held by a number of different funds and institutions whose eligibility requirements for the provision of assistance vary,
- the principle of **intervention at the earliest possible stage** in order to minimise the degree and effects of disability and to compensate as far as possible for unavoidable effects while taking into account what is possible and necessary in each individual case, and
- the principle of **individual assistance**, which must be tailored to the actual needs of each individual person with disabilities or in danger of becoming disabled, and which must meet these needs by suitable means.

## 12

If account is taken of the principle of intervention at the earliest possible stage which is part of the requirements laid down in section 4 of Book 9 of the Social Code, it becomes clear that the most suitable time for intervention in individual cases is always at as early a stage as possible.

### DISABILITY AND INTERVENTION



The incorporation into German law of the three-tiered concept for disabled persons as defined by the World Health Organisation indicates the different levels on which assistance may be provided:

- in the area of threatening or existing impairments by prevention e.g. in the form of healthy living, accident prevention and other forms of avoiding or reducing risks, with the help of prophylactic measures, rescue services or medical treatment and rehabilitation;
- in the area of **activity limitations** by assistance to compensate for functional restrictions, e.g. orthopaedic appliances, functional training or technical aids to equip the workplace;
- in the area of participation restrictions by avoiding or removing barriers or by choosing an occupation which permits or facilitates the exercise of employment in spite of the functional restrictions, for example.

An important case for the application of the principle of intervention at the earliest possible stage is that medical rehabilitation benefits and benefits aimed at participation in working life take priority over payments of pensions if no pension is to be paid or at least not until a later date due to successful participation-oriented benefits (section 8(2) of Book 9 of the Social Code, section 9(1) of Book 6 of the Social Code) - principle of „participation-oriented benefits before payment of pension“. The same applies if participation-oriented benefits help to avoid, overcome or alleviate the need for long-term care or prevent its aggravation - principle of „participation-oriented benefits before long-term care“ (section 8(3) of Book 9 of the Social Code, section 5 of Book 11 of the Social Code).

**13** Participation-oriented benefits with the aims specified in section 4 of Book 9 of the Social Code are provided in the following benefit categories:

- medical rehabilitation benefits
- benefits aimed at participation in working life, and
- benefits aimed at participation in community life.

Medical rehabilitation benefits and benefits aimed at participation in working life are supplemented by a further benefit category, namely „maintenance-securing and other supplementary benefits“; this does not apply in the field of youth welfare and social assistance.

**14** There is not one single independent social benefit fund which holds responsibility for participation-oriented benefits as a whole or even individual benefit categories; instead they are part of the miscellaneous tasks of a number of benefit funds which, in the context of participa-

tion-oriented benefits, are referred to as **rehabilitation funds**. According to section 6 of Book 9 of the Social Code,

- **medical rehabilitation benefits** are provided by the health insurance, pension insurance and occupational accident insurance funds as well as by the funds providing compensation benefits in the event of damage to health,
- **benefits aimed at participation in working life** are provided by the Federal Employment Agency, the pension and occupational accident insurance funds as well as by the funds providing compensation benefits in the event of damage to health,
- **benefits aimed at participation in community life** are provided by the occupational accident insurance funds and by the funds providing compensation benefits in the event of damage to health.

Because of their comprehensive range of responsibilities, the funds responsible for public youth welfare and social assistance step in as subsidiary funds in case of all benefits aimed at participation where the required benefits cannot be obtained from funds responsible in the first place because the respective eligibility requirements are not met in individual cases. On the whole, participation-oriented benefits are provided by seven categories of rehabilitation funds:

Benefits aimed at	occup. accident ins.	social compensation	health insurance	pension insurance	Fed. Employment Agency	youth welfare	social assistance
medical rehabilitation	X	X	X	X		X	X
participation in working life	X	X		X	X	X	
participation in community life	X	X				X	X

## 15

The question as to which benefits aimed at participation are provided by which rehabilitation fund and under which conditions depends on the benefit laws applying to the individual rehabilitation funds (section 7, clause 2, of Book 9 of the Social Code); this takes account of the fact

that the system consists of various branches. Thus pension insurance benefits may only be granted to persons who are covered by that scheme, and social assistance benefits only to those who meet the requirements of that scheme; the relevant regulations are laid down in the respective Books of the Social Code and in other laws on benefits. In contrast, regulations on the nature and objectives of participation-oriented benefits which can be similar for various social benefit areas are to be found only in one place - in Book 9 of the Social Code - which is also meant to illustrate that the common objective - a participation of disabled persons and persons who are in danger of becoming disabled in the life of society to the largest possible extent - is generally pursued in the same way by all rehabilitation funds that are responsible in individual cases. Due to the consolidation of regulations which apply uniformly to several social benefit areas Book 9 of the Social Code is similarly effective across the board as the regulations of Books 1, 4 and 10 of the Social Code already were before. Because of the particularities of a system which consists of various branches these uniform regulations can only apply if the benefit legislation applicable to the individual rehabilitation funds does not provide otherwise; in the context of the drafting of Book 9 of the Social Code, however, many special regulations of individual benefit laws were repealed, replaced by references to Book 9 of the Social Code or adjusted in terms of their contents.

**16** The rehabilitation funds are obliged to cooperate. According to section 13 of Book 9 of the Social Code ambiguous responsibilities between the various rehabilitation funds should be solved by mutual agreement in the form of joint recommendations, if possible. The associations of disabled persons including the associations of voluntary welfare work, self-help groups and interest representations of disabled women and the central associations representing the interests of out-patient and in-patient rehabilitation institutions will be involved in the preparation of the joint recommendations. If possible, the recommendations will take account of their concerns. They will also take account of the special needs of women and children with disabilities or in danger of becoming disabled.

**17** To what extent and how the objectives specified in section 4 of Book 9 of the Social Code, section 10 of Book 1 of the Social Code can be attained in individual cases for disabled persons and persons who are in danger of becoming disabled, i.e. the participation potential, has to be determined individually by means of a prognosis of the development achievable with the best possible support. The possibilities and problems of disabled persons and persons who are in danger of becoming disabled are not restricted to individual areas, such as the medical or vocational sector; the individual benefits must rather take account of

the specific circumstances of a person's life as a whole which provide the framework within which rehabilitation and participation are to be achieved and which disabled persons, because of their „functional restriction“, do not approach in the same way as non-disabled persons. The comprehensive concept of participation and a holistic support resulting from section 4 is supplemented by further regulations of fundamental importance, in particular

- the priority of prevention (section 3 of Book 9 of the Social Code),
- the right of beneficiaries to express wishes and to choose (section 9 of Book 9 of the Social Code),
- the speedy, efficient and economical provision of participation-oriented benefits (section 10 of Book 9 of the Social Code), and
- the coordination and interaction of benefits (sections 11 and 12 of Book 9 of the Social Code).

## 18

Participation-oriented benefits must be necessary for the implementation of the objectives. They are **necessary** only if they are suited to help attain the objectives specified in section 4 of Book 9 of the Social Code. A further requirement is that there is no other reasonable way to attain these objectives. Examples for alternative ways which make participation-oriented benefits dispensable include the following:

- to attain the objectives with the help of the other benefits referred to in no. 2,
- the disability-suited, especially barrier-free design of environments, or
- the willingness of employers, for example, to provide for the training of disabled persons, if such training is necessary, upon their own initiative and at their expense.

Such **alternative ways to attain the objectives** must be practicable and sustainable. A rehabilitation fund which, in view of such alternatives, does not consider it necessary to provide benefits must help the persons entitled to benefits identify and implement the most suitable alternatives and, if necessary, take the initiative itself. If alternative ways fail, the participation-oriented benefits are still necessary in legal terms. Where the prognosis indicates that there are several different ways to attain the objectives specified with equally good results and in the same time, the **right of the person concerned to express wishes and to choose** as laid down in section 9 of Book 9 of the Social Code has to be observed first. Within a subsequently remaining scope for decisions the principles of **economic efficiency** and **economy** apply. Section 26(2) of Book 7 of the Social Code which applies to the occupational accident insurance and which stipulates that the objectives specified

there are to be attained „by all suitable means“ does not provide otherwise in terms of the substance. In the field of social assistance, section 3a of the Federal Social Assistance Act has to be observed where the rights of disabled persons to express wishes and to choose are restricted under certain circumstances.

**19** Where benefits from different benefit categories or several rehabilitation funds are necessary, section 10(1) of Book 9 of the Social Code provides that the rehabilitation funds involved, in consultation with each other and the persons entitled to benefits, are required to combine the benefits which are probably necessary to meet the individual needs in such a way that a smooth and continuous process is ensured. Benefits are to be provided in relation to their functions which means that there are no general benefit descriptions; benefits are rather granted in accordance with individual needs and the individual participation objectives to be attained with their help. The benefits have to be adjusted to the progress of the rehabilitation process and must be aimed at helping the persons concerned attain the comprehensive participation in the life of society, which corresponds to the objectives of section 1 and section 4(1) of Book 9 of the Social Code, in a speedy, efficient and economic way and on a permanent basis while taking account of the particular features of individual cases. The rehabilitation funds have to ensure a continuous process in line with the respective needs (participation management). The already introduced change of paradigms, namely to support people who are sick, disabled or in need of long-term care more strongly in leading as autonomous and selfdetermined a life as possible, is being continued and developed. Especially the introduction of a so-called personal budget as total budget for all relevant benefits from all funds is meant to serve the purpose; provision for this personal budget will be made in Book 9 of the Social Code. Accordingly, people who are disabled or in need of long-term care will receive regular cash payments which they can use to organise and buy certain care services themselves. The concept of the personal budget will be tested from 1 July 2004 to 31 December 2007, a legal entitlement to this budget will be introduced with effect from 1 January 2008. By the end of 2006, the Federal Government will inform the German Bundestag and the Second Chamber of Parliament, the Bundesrat, about the experiences gathered during the trial stage.

**20** Section 11 of Book 9 of the Social Code provides that in so far as it is necessary in individual cases, the responsible rehabilitation fund examines at the time when medical rehabilitation benefits are initiated, while they are provided and after their completion whether the earning capacity of a person with disabilities or in danger of becoming disabled

may be preserved, improved or restored by means of suitable benefits aimed at participation in working life. If it becomes evident during the provision of medical rehabilitation benefits that it may be difficult for a person to keep his present job, the question whether benefits aimed at participation in working life are necessary is clarified without delay in consultation with the person concerned and the responsible rehabilitation fund.

**21** In addition to the benefits aimed at participation in working life that are granted if the requirements are fulfilled, severely disabled persons may also receive special benefits and other assistance under Part 2 of Book 9 of the Social Code to attain this objective; further details are given in nos. 92 to 107. These benefits are financed from the compensatory levy which employers have to pay if they fail to meet their obligation to employ severely disabled persons. The benefits of the statutory long-term care insurance whose funds do not belong to the rehabilitation funds are described separately in chapter 11.

**22** Also in international comparison and in spite of still existing needs for improvement, the Federal Republic of Germany has a comprehensive social benefit system which, although it is differentiated in its structure, provides continuous coverage also and particularly for disabled persons. The significance of social benefits for the participation of disabled persons and persons who are in danger of becoming disabled is also shown in their financial weight. The following shows the expenditure of the rehabilitation funds in 2002:

- 2,610 million EUR by statutory health insurance funds for medical rehabilitation benefits,
- 5,020 million EUR by pension insurance funds for medical rehabilitation benefits and benefits aimed at participation in working life,
- 3,190 million EUR by occupational accident insurance funds for curative treatment benefits and for benefits aimed at participation in working life and in community life,
- 2,790 million EUR by the Federal Employment Agency for benefits aimed at participation in working life,
- 10,760 million EUR by social assistance for benefits assisting the integration of disabled persons.

**23** The German understanding is that in addition to the elimination of existing and the prevention of new discrimination, participation-oriented benefits are - as social benefits - at the core of the efforts aimed at a participation of persons with disabilities or in danger of becoming disa-

bled in working life and in the life of society as a whole. A participation in the life of society as far-reaching and effective as possible requires, however, that these benefits are supplemented by

- a focus on the **individual abilities** and development potentials of disabled persons,
- a **disability-suited design** of environments to which disabled persons are exposed and with which they have to cope (e.g. in transport or when communicating with others),
- a sufficient **willingness** of disabled persons on the one hand and of society on the other to do everything they can to ensure full participation, and
- a „**participation-friendly climate**“ in society as a whole.

## 24

An equally differentiated system of facilities and services exists to serve the differentiated legal principles and their practical implementation. This makes it possible to provide assistance according to individual needs using means and measures tailored especially to these needs. It is important that the support necessary for participation in the life of society is combined with the sustained and adequate further development of existing social relations. For this reason, where it is possible to provide effective support by means of out-patient assistance, this is preferred, especially since it gives those affected greater scope for determining their own living circumstances. Assistance measures which facilitate contact with non-disabled persons also take priority; the amount of assistance provided within special institutions for disabled persons must be limited to that strictly necessary. The specific support necessary in each individual case must be guaranteed, however.

## 25

The task of ensuring that disabled persons participate in the life of society „as normally as possible“ is not solely an obligation of the State, but the task of everyone. Social benefits and other forms of assistance cannot guarantee but only facilitate and promote the participation of disabled persons and persons who are in danger of becoming disabled in the life of society; where these are rendered unnecessary by personal and social commitment, then not only the aim of participation is achieved but also the degree of the „required assistance“ is reduced.

## 26

Legal provisions, facilities and services can only be seen as invitations and opportunities for participation; the aims specified in section 4 of Book 9 of the Social Code can only be achieved where the disabled persons or persons who are in danger of becoming disabled have the corresponding self-motivation. Therefore, advice and assistance for partici-

pation must be linked to each disabled person's own personal motivation and this motivation must continue to be reinforced in view of the possibilities for rehabilitation which exist in each individual case. The initiation of participation-oriented benefits requires the consent of the disabled persons (section 9(4) of Book 9 of the Social Code); they must become involved in the implementation of these measures, and justified requests as to the concrete form of such benefits are met, if possible (section 9(1), clause 1, of Book 9 of the Social Code). Since personal development is much more difficult for disabled persons in many instances it is important that the benefits, services and facilities leave them as much scope as possible to make their own arrangements in life and promote their self-determination.

## PREVENTION, EARLY DETECTION AND EARLY INTERVENTION

**27** According to the objective embodied in section 3 of Book 9 of the Social Code, it is first of all intended to avoid the manifestation of disabilities and chronic diseases by a targeted prevention in all age groups and areas of life as far as possible. Important fields in this respect are safety at work and accident prevention, environmental protection and health protection, especially with regard to chronic, degenerative diseases. Efforts aimed at avoiding disability can, however, only have partial success given the present state of knowledge and technology. On the one hand, a large number of potential risks may affect human beings and their development of which the factors which cause disease and disability do not become fully apparent either individually or in combination. On the other hand, the constant change in living conditions renders it more difficult to recognise and eliminate especially those factors of influence whose effects only become apparent in the longer term. Furthermore, not everything which is scientifically feasible is suited to practical application, e.g. where fundamental ethical principles oppose such application; this applies in particular to prenatal diagnosis and genetic technology. Even where a life is in danger of becoming disabled, it is necessary to uphold the principles of human dignity and the human being's freedom to develop.

**28** In particular men and women who are known to have hereditary risk factors can benefit from genetic advisory services which allow them to consider and weigh up the risks of pregnancy. Supervision by a doctor during pregnancy, including regular preventive check-ups intended to detect and eliminate risk factors, are part of the services provided by health insurance funds and the social assistance fund. Taking advantage of these opportunities has increasingly become an established practice.

**29**

The earlier in a child's development an irregularity or a problem is remarked, the better prevention or successful treatment is possible; especially phases of development in early childhood can be influenced effectively in many cases. A scheme of examinations for the early detection of diseases in new-born babies and children up to six years and an additional one after the tenth year are obligatory benefits in the statutory health insurance and the social assistance. The scheme provides for altogether 10 stages of examinations which are intended to detect symptoms which may be indications of existing or threatening disabilities and, therefore, provide starting points for more extensive measures intended to avert a threatening disability, to eliminate an already recognisable disability or at least to alleviate the effects of the disability. It is preferable that these examinations be performed by paediatricians and general practitioners with the relevant qualifications. The results are recorded in an examination record which is kept by the parents. Each examination is an essential part of a holistic concept of prevention for the early detection of disabilities, whereby the last examination is of equal importance to the first, even if no health abnormalities have been detected in the child by this time. The particular importance of nation-wide protective immunisation (e.g. against polio) as an effective means for the prevention of disabilities is undisputed, and the vaccination of infants is usually carried out as part of the preventive examinations. As the children grow older, the school doctor service assumes the important tasks of early detection and prophylactics.

**30**

A sophisticated care scheme is in operation to provide the best possible care for disabled children and children who are in danger of becoming disabled. The necessary aid is provided by

- registered paediatricians and other doctors and therapists,
- out-patient interdisciplinary early intervention centres,
- social-paediatric centres caring for larger areas.

First-time medical consultation and treatment is normally provided by registered paediatricians who are supported in their work by experts at the Health Offices and doctors for disabled persons appointed at Land level. Early treatment and early intervention in many cases require an interdisciplinary range of medical, psychological, educational and social services within easy reach of the family and its home. In this area of the system of care, the networks of regional early intervention centres and of social-paediatric centres caring for larger areas are complementary. These very different institutions and specialist services, funded

partly by private and partly by public means, exhibit considerable regional and local differences with regard to their number and standard of equipment as well as with regard to their organisation and working methods. While assistance at social-paediatric centres concentrates on a wide range of diagnostic and medical therapy services for especially difficult cases, early intervention centres provide above all psychological, paediatric and social assistance for parents and children. These centres, together with mobile teams which provide early intervention in the home, provide both medical and non-medical services, in particular educational and psychological assistance and, at the same time, foster the ability of the affected families to bring up their children and provide encouragement.

**31** In the field of early detection and early intervention measures for disabled children and children who are in danger of becoming disabled, the necessary medical and medical-educational benefits are provided as benefit complex by the responsible rehabilitation funds, normally the health insurance funds and the local social assistance funds (sections 30 and 56 of Book 9 of the Social Code). They include therapeutic, psychological, medical-educational, special educational, psycho-social benefits and counselling for those raising the children, normally offered by interdisciplinary early intervention centres or social-paediatric centres. The provisions required to classify the benefits and to regulate the division of costs between the rehabilitation funds are laid down in a regulation which entered into force in 2003.

**32** According to section 20 of Book 5 of the Social Code, the statutory health insurance funds have to cooperate with the occupational accident insurance funds in the prevention of work-related health risks. Members of statutory health insurance funds are also entitled to regular medical check-ups from the age of 35 years for early detection of diseases, in particular for diseases of the heart, the circulatory system and for kidney diseases as well as for diabetes; added to these examinations are annual cancer-screening examinations for women over the age of 20 and for men over the age of 45 (section 25 of Book 5 of the Social Code).

**33** According to section 23 of Book 5 of the Social Code, members of statutory health insurance funds are entitled to medical prevention services, where necessary, in order

- to treat a health problem which would be likely to lead to a disease within the foreseeable future,
- to counteract risks to the healthy development of a child,

- to prevent diseases or avoid their aggravation, or
- to avoid the need for long-term care.

If required, services such as these are provided in the form of preventive health cures on an out-patient basis.

**34** Also of relevance to prevention are the regulations regarding the prevention of accidents at work and occupational diseases (sections 14 et seq. of Book 7 of the Social Code and the accident prevention regulations of occupational accident insurance funds) and numerous statutory and collectively agreed provisions on safety and health at work, whereby the increasing number of working materials which are harmful to health constantly demands the incorporation of new activities. New approaches to prevention at company level are laid down in section 84 of Book 9 of the Social Code. Accordingly, if difficulties arise in the employment relationship which may endanger this relationship, the employer is required to involve the severely disabled persons' representation, the staff representations and the integration office as early as possible to discuss with them all possibilities and forms of assistance suited to remove the difficulties and to help continue the employment relationship permanently, if possible. The same applies, with the consent of the person concerned, if a severely disabled person has been unfit for work for an uninterrupted period of more than three months or if the employment relationship is endangered for reasons of health. The instrument of prevention at company level which was introduced by virtue of the Act to Combat Unemployment among Severely Disabled Persons is meant to be further developed by the introduction of an integration management at company level in the sense of 'rehabilitation instead of dismissal', the aim is to prevent employment-related difficulties from the outset or remove them as early as possible. The instrument of integration agreements would be suited to regulate the details and precise form of such an integration management.

## MEDICAL REHABILITATION BENEFITS

**35** According to section 26 of Book 9 of the Social Code the necessary medical rehabilitation benefits are provided in order to avert, eliminate, alleviate or compensate for a disability or prevent its aggravation or to avoid, overcome or alleviate reductions in earning capacity or the need for long-term care or prevent an aggravation and to prevent the early receipt of social benefits or reduce social benefits that are paid. In addition to early detection and early intervention measures for children with disabilities or in danger of becoming disabled, they include in particular

- treatment by doctors, dentists and members of other health professions provided that their services are rendered under medical supervision or upon medical prescription; this includes help to develop one's own healing forces,
- medicines and dressings,
- therapeutic remedies including physical therapy, speech therapy and occupational therapy,
- psychotherapy as medical and psychotherapeutic treatment,
- aids,
- tolerance-level testing and work therapy.

**36** Only a few of these services are specifically intended for rehabilitation; since prevention, acute treatment and medical rehabilitation tend to overlap in their aims as well as in the specific medical measures or medically prescribed measures, the majority of services are very much the same as those required to treat an illness, e.g. within the scope of health insurance. Preventive measures and participation-oriented benefits are intended on the one hand to eliminate the need for acute treatment at a later date; on the other hand, acute treatment must be structured in such a way that no disability or only the lowest possible degree remains after the conclusion of treatment, and where a functional restriction remains, it should prepare for life with this restriction and its consequences, e.g. by training with aids. For this reason, section 11 of Book 5 of the Social Code makes it clear that the statutory health insurance has to provide medical rehabilitation benefits also with the aim of averting, eliminating, alleviating or compensating for disabilities or the need for long-term care, of preventing an aggravation or mitigating their effects; according to section 27 of Book 9 of the Social Code, also acute treatment must always use the aims of rehabilitation as laid down in sections 26 and 10 of Book 9 of the Social Code as a guiding principle.

**37** In the context of medical rehabilitation benefits, special emphasis is given to the supply of aids according to Section 31 of Book 9 of the Social Code. Accordingly, entitlement is given to the aids required in each individual case if these can be worn or carried by the beneficiaries or taken along if they move houses, e.g. a wheelchair with special fittings. The entitlement includes any alterations, repairs and replacements required and training in the use of the aids. The special counselling by the medical service of the statutory health insurance funds in co-operation with orthopaedic supply centres (section 275(3) of Book 5 of the Social Code) is also intended to determine the supply of aids according to individual requirements. Details of the supply of aids are regulated by the

guidelines of the leading associations of insurance funds. In the area of the occupational accident insurance, reference is made to the regulation governing the supply of orthopaedic aids to people injured in accidents, and in the area of social compensation to the Orthopaedic Regulation.

**38** According to sections 44 et seq. of Book 9 of the Social Code and supplementary provisions in the individual laws governing benefits, medical rehabilitation benefits are provided together with benefits to guarantee subsistence and other supplementary benefits, in particular cash benefits to guarantee subsistence (sickness benefit, bridging allowance, injury benefit, compensation for loss of income), help at home (section 54 of Book 9 of the Social Code) and travelling expenses (section 53 of Book 9 of the Social Code). Travelling expenses include in particular the necessary travelling, subsistence and accommodation expenses.

**39** The rehabilitation funds which provide medical services are fully responsible for acute treatment and rehabilitation; only the pension insurance funds provide (apart from pensions) exclusively participation-oriented benefits which are granted according to their best judgement, whilst legal rights exist to the benefits from the other funds.

**40** In the statutory health insurance

- disabled children are (co-)insured for an indefinite period if one parent is insured and the child cannot maintain itself, and
- severely disabled persons have an autonomous right to become members under certain circumstances (section 9(1), no. 4, of Book 5 of the Social Code).

**41** Effective medical rehabilitation benefits require a sufficient range of suitable institutions. The rehabilitation funds assure the quality of benefits by the adoption and further development of joint recommendations (section 20 of Book 9 of the Social Code). The rehabilitation funds assure quality; this is done by means of contracts if rehabilitation services and institutions of other funds are used. In the health insurance a statutory „profile of requirements“ for rehabilitation institutions laid down in section 107(2) of Book 5 of the Social Code is aimed at reserving this designation and the regulations which apply to it only for institutions of high quality.

**42** Out-patient benefits are to be preferred to in-patient benefits if the persons entitled to benefits agree and if the required assistance can be provided with the same effectiveness also in this way. The persons con-

cerned receive financial support and have social insurance coverage also during rehabilitation measures on an out-patient basis. There is an entitlement to bridging allowances not only in cases where benefits are provided in institutions but also where such benefits are provided on an out-patient basis; this leads to compulsory social insurance including the payment of contributions by the rehabilitation funds. Finally, employees are entitled to the continued payment of wages by their employer if they are prevented from working due to a medical rehabilitation benefit; this applies irrespective of whether the benefit is provided on an in-patient or an out-patient basis.

**43** According to section 41 of Book 5 of the Social Code, however, the principle of „preferring out-patient to in-patient, if possible“ does not apply to rehabilitation benefits provided for mothers in facilities of the Müttergenesungswerk or similar facilities; these are particularly important for mothers of disabled children. Pension insurance funds also provide their medical rehabilitation benefits mainly on an in-patient basis in institutions, often as a follow-up rehabilitation to allow a smooth and rapid transition from acute treatment to rehabilitation.

**44** The gradual reintegration into working life according to section 28 of Book 9 of the Social Code, section 74 of Book 5 of the Social Code, is above all meant for long-term sick persons and persons in rehabilitation measures who, in their doctors' opinion, are able to perform their previous activity only to a certain extent. Weekly hours of work begin, depending on the type of illness and on therapeutic necessity, with a few hours initially, gradually extending to normal working hours; this phase of adjustment may take up to several months. A measure of this type is not intended to make a person work while he is still unfit for work, and it may not be allowed to interfere with the process of convalescence in any way whatsoever, but is exclusively intended to serve the aims of rehabilitation.

**45** Also in case of chronic illnesses, it is often enough and proves useful to provide the necessary benefits close to where the patient lives instead of in-patient treatment and rehabilitation. The advantages of this are, for example, avoidance of incapacity for work, involvement of the social environment as well as considerably reduced costs in comparison to in-patient treatment. Possibilities for rehabilitation in the form of out-patient treatment have not, however, been sufficiently exploited and require continuing development and a shift of emphasis away from the previously dominating „intermittent therapy“ to continuous long-term rehabilitation. „The Doctor's Guide to Rehabilitation“ drafted by the Federal Working Group on Rehabilitation in cooperation with the asso-

ciations of funds, also serves to improve the level of knowledge about the possibilities for rehabilitation.

**46** An increasingly important role in medical rehabilitation is being played by (in some cases voluntary) care services, organisations of disabled persons and self-help groups, which work in close co-operation with the rehabilitation funds and which represent an important addition to the professional health care system, for example when dealing with chronic degenerative diseases (section 20(4) of Book 5 of the Social Code, section 29 of Book 9 of the Social Code).

## THE PRINCIPLE OF „REHABILITATION BEFORE CARE“

**47** In order to avoid long-term care for elderly people, qualified geriatric rehabilitative treatment is usually necessary. Intensive therapy (including physiotherapy, kinesiotherapy, speech and occupational therapy) is often successful in preventing chronic invalidity in elderly people and in rehabilitating them to such an extent that they can either return to live with their relatives or can live in a senior citizens' home where they retain a great degree of independence. It may also be possible to improve their condition to such an extent that they are able to run their own household and be either completely or partly independent of outside help. Here, too, the same principle applies - „out-patient before in-patient“. The long-term care insurance funds have to provide provisional medical rehabilitation benefits to counteract a (threatening) need for long-term care. If a person who claims benefits from the long-term care insurance is in hospital or in a rehabilitation institution, and if there are indications that an assessment by the medical service of the health insurance fund is required to ensure the continued provision of out-patient or in-patient care, such an assessment has to be made within one week at the latest.

**48** To realise the principle of „rehabilitation before care“, which has its legal basis in section 8(3) of Book 9 of the Social Code and in sections 11, 23 and 275 of Book 5 of the Social Code, in addition to structuring general out-patient and in-patient medical care and in-patient geriatric care with a greater emphasis on rehabilitation, a three-tiered system of rehabilitative facilities has been set up:

- geriatric out-patient departments in hospitals and social centres with mobile services, in particular physiotherapy and ergotherapy services, also intended for continuing intensive rehabilitation treatment following a stay in an in-patient institution,

- for patients for whom out-patient rehabilitation care is insufficient, but for whom in-patient treatment is not or no longer necessary, day clinics as partial in-patient institutions,
- institutions for adequate in-patient care of persons suffering from diseases related to old age and of long-term sick persons which offer, among other things, skin care, bladder training, physiotherapy, ergo-therapy with self-help training programmes, psychological care and speech therapy.

**49** The willingness of doctors to largely use the potential for rehabilitation of elderly patients requires above all knowledge of the existence of such a potential and a belief that an elderly person also has the right to lead a dignified life as independently as possible of outside help. Even in severe cases where persons dependent on care can only be enabled to feed themselves again and use the toilet without assistance, an important aim of rehabilitation has already been achieved.

## REHABILITATIVE SPORT AND SPORT FOR DISABLED PERSONS

**50** Rehabilitative sport which is available on a doctor's prescription as a supplementary benefit used to be regarded primarily from the point of view of an improved performance and tolerance level of the disabled person; today it is also regarded as a contribution towards social and psychological stabilisation, as well as for participation in the life of society as a whole. In the framework of rehabilitative sport disabled women and girls can also participate in exercises to strengthen their self-confidence (section 44(1), no. 3, of Book 9 of the Social Code). In a general agreement the benefit funds from the areas of health insurance, pension insurance and occupational accident insurance as well as social compensation, together with the Federal Association of Health Insurance Fund Doctors, have determined guidelines relating to the application of rehabilitative sport and functional training.

**51** According to the Federal War Victims Relief Act, persons who have suffered damage to health are entitled to participate in exercises for disabled persons to allow them to regain and sustain physical capability. The same applies to those who are looked after in accordance with laws that declare the Federal War Victims Relief Act to be applicable. Exercises for disabled persons are carried out - like rehabilitative sport - in exercise groups under medical supervision and with specialist guidance as part of the regular local exercise activities of suitable sports associations. The benefits for integration assistance for disabled persons under the aegis of social assistance also include rehabilitative sport.

# EDUCATION AND TRAINING FOR DISABLED PERSONS

**52** Education has a very special meaning for children, young people and adults with disabilities. On the one hand it enables them - as it does non-disabled persons - to develop a self-reliant personality; on the other hand the vocational and general opportunities of disabled persons are dependent to an even greater extent on the quality of education and training than in the case of non-disabled persons.

**53** It is the primary task of education to promote the capacity for learning and education of each individual as much as possible in the light of their particular disability, if necessary with forms of assistance specific to the disability. Moreover, those affected must learn to cope in a world which is anything but tailored to their disability; they must learn to accept and live with their disability. As well as imparting educational qualifications, then, education must provide practical individual assistance and assistance toward social integration and it must do so not only in pre-school education and schools, in the field of vocational training and in colleges and universities but also in further education. To counter the danger of excessive protection and special conditions resulting in isolation, the principle to be adopted is „as much special assistance as necessary, as much shared learning with non-disabled persons as possible“.

**54** Nurseries offer a favourable starting-point for the integrated education of disabled and non-disabled children as the forms of individual assistance in operation are flexible and it is possible for them to accustom themselves to social contact while, in contrast to schools, there is no need to standardise performance. With the aim of an integrated education of disabled and non-disabled children of pre-school age the following organisation forms have been developed:

- individual integration of disabled children in neighbourhood nurseries,
- integrative groups in regular nurseries (beside regular groups),
- integrative groups in special nurseries (beside special groups),
- integrative nurseries following the general principle of integrated education in all groups,
- special and regular nurseries as separate organisations - also of separate providers - „under one tent“ (additive form).

**55** School education is regulated in the laws relating to schools and special schools of the Länder, in implementing regulations as well as in various decrees (of which the details may differ from Land to Land). According to this body of legislation, disabled children and young people should receive as much educational assistance as possible to ensure that they can achieve the educational aims of ordinary schools. In addition, it is intended to assist as many disabled children and young people as possible in regular schools and to provide additional special teaching aids and other suitable support where required. However, there is no legal entitlement to such assistance.

**56** Where disabled children and young people cannot receive assistance, or sufficient assistance, in other types of schools, special schools must help them to achieve those educational aims which are within their capabilities. There, too, the aim is to help the disabled child obtain a general school-leaving qualification, if the child's abilities allow it.

**57** Germany has a differentiated and well-organised system of special schools. There are special schools which concentrate on support in the fields of

- seeing,
- hearing,
- language,
- physical and motor development,
- mental development,
- emotional and social development,
- sickness.

A total of 430,214 children attended special schools in the school year 2002. The schools most frequently attended are those for people with learning disabilities, which 233,185 pupils attended in 2002. The Standing Committee of Ministers of Education and Culture from the various Länder adopted, over the years, a sequence of recommendations for teaching in individual types of special schools.

**58** Special schools are legally obliged to examine, at the end of every school year, whether attendance at the special school is still required in future. They should cooperate with other schools to work towards the participation of their pupils in classes with non-disabled children as far as possible or seek other forms of co-operation with regular institutions.

- 59** It is intended to expand integrative support also in the area of schools, in order to continue to support disabled children and young people and those who are in danger of becoming disabled in interaction with non-disabled children and young people beyond the nursery stage. Many disabled children can receive very effective assistance in regular schools, if they receive additional special teaching by specially trained teachers and a suitable degree of additional care, if there are disability-suited facilities and provided that there is no more than a certain number of disabled children per class; in a lot of Länder appropriate models have been successfully tested.
- 60** The legislative provisions of the Länder contain regulations governing the (often extended) duration of compulsory school attendance for individual types of disability, special forms of the first year of vocational training carried out in schools (special forms of vocational training year) as well as satisfaction of the obligation to attend part-time vocational schools. Thus mentally disabled young people satisfy this requirement at the workshop stage in the special schools; this stage prepares for transition into workshops for disabled persons, which is usually the next step. Special schools generally have the particular task of preparing for the selection of a career in the final years; here they cooperate closely with careers advisory services.
- 61** As far as the schools do not provide the disability-specific assistance which is required by a disabled child to attend school, the social assistance funds intervene irrespective of the level of income and assets of the parents (section 40(1), no. 4, section 43(2) of the Federal Social Assistance Act).
- 62** The assistance for appropriate school education and for training for a suitable profession which is provided by the social assistance funds as part of integration assistance extends from assistance to attend a secondary school right up to education at a university (section 40 of the Federal Social Assistance Act, sections 12 and 13 of the Integration Assistance Regulation). Social assistance also pays for additional therapy services during school education where these are not paid for by other funds responsible in the first place, e.g. health insurance funds, and for those young disabled persons who cannot be helped even by special schools, it pays for measures aimed at providing training in practical everyday skills and to help cope with everyday life.
- 63** Special assistance for disabled persons is also required in the area of university education. Section 2(5) of the Framework Act for Higher Education requires universities to make it their duty to take account of the

special needs of disabled students. To improve the study opportunities, the Deutsche Studentenwerk has set up an advice centre for applicants and students with disabilities which documents the possibilities for study available to disabled persons throughout the country and also provides information and advice.

**64** It is also necessary to mention that open university courses also offer a greater degree of self-determination with regard to the place of learning, learning aims and learning speed and, therefore, offer considerable advantages to disabled students. On the other hand, a course of study on an open university basis obviously cannot make the same contribution towards developing the personality and to the social integration of disabled persons as can a course of study under normal conditions.

**65** Disabled and non-disabled students have equal access to assistance to promote study under the Federal Education Assistance Act. The Act embodies certain special provisions to compensate for problems due to disability. Thus disabled students receive assistance benefits for the period by which a course of study is extended due to disability beyond the maximum term of assistance. The assistance exceeding the maximum time because of disability is granted as a subsidy and not - as usual - as half loan. Where the income of the parents or of a spouse is taken into account when determining needs, application can be made for expenses for disabled persons which exceed the fixed allowance rates to be taken into account in order to avoid undue hardship.

**66** The need for education lasts a lifetime for disabled and non-disabled persons alike. In order to integrate disabled persons into further education, concepts for specific training of lecturers are developed and tested, and the development of models for suitable further education offers for disabled persons is promoted.

## CAREERS ADVICE

**67** It is important for disabled persons to have access to working life as far as possible according to the same principles and criteria and at the same centres of learning as non-disabled persons. In principle, all vocational options and possibilities which can be selected by non-disabled persons are also open to disabled persons. Consequently the principle of integration has always occupied a highly important position in vocational training and practical experience for disabled persons.

**68** The transition from school to a training place or workplace is a crucial stage for further participation and it is, therefore, a stage of particular importance for young disabled persons. The choice of a career calls for thorough preparation as early as possible; school, careers advisers, parents must work closely together with the disabled persons themselves for this purpose. Preparatory measures begin in the final years at school (general school or special school for various types of disability) with specific subjects (e.g. „Employment Studies“, „Engineering / Handicrafts“, „Economics“) intended to convey basic knowledge about working and professional life. The different Länder responsible for this have differing rules in respect of the details. Schools make use of the comprehensive written material provided by the Federal Employment Service.

**69** The obligation of the Federal Employment Agency to cooperate with schools and other bodies to provide careers advice is laid down by law (section 29 et seq. of Book 3 of the Social Code). Details are regulated by the 1971 „Skeleton Agreement on Co-operation between Schools and Careers Advice“ adopted by the Conference of Ministers for Education and Culture, the supplementary agreement between this Conference and the Federal Employment Agency, and by corresponding regulations in the individual Länder. Regular meetings take place at federal and Länder level between the authorities for education and culture and the Federal Employment Agency.

**70** The Federal Employment Agency has to offer a qualified careers counselling for disabled persons in accordance with the principles laid down in sections 29 et seq. of Book 3 of the Social Code. The specialised careers counselling services for disabled persons set up in all local employment agencies according to section 104(4) of Book 9 of the Social Code are responsible for

- advice and information on questions of career choice, including a change of occupation,
- vocational information (vocational orientation),
- information on the assistance available for vocational training in individual cases, and
- placement into vocational training places.

The careers counselling service also gives information about the financial benefits aimed at participation in working life available to disabled persons.

**71** Utilisation of careers counselling in the employment agencies occurs on a voluntary basis and is free of charge. The careers counsellors for disa-

bled persons will, where necessary, consult the specialist medical and psychological services of the employment agencies in order to assess the aptitude and inclinations of the young person concerned and to obtain an indication of possible future vocational assistance requirements. For blind young persons, the Federal Employment Agency offers a special information package on career choice. Careers counselling and placement to vocational training places can also be done by third persons if it is in the interest of the person concerned.

**72** The growing discrepancy between the personal qualifications of applicants and the requirements of working life complicates the problems of entering working life and makes the choice of a career more difficult. Since the possibilities for training and employment are limited by the disability, a very systematic and carefully defined preparation for the choice of a career is required. The practice, which has been fully introduced in some regions, of records being kept by (special) schools and careers counselling centres - jointly assessing the opportunities for participation in working life and the necessary training measures - has proved worthwhile, particularly for young persons with learning difficulties; this not only clarifies matters for those affected and their families but at the same time documents the regional requirements in terms of assistance.

**73** It has proved useful in cases where some doubt still exists to re-examine the aptitude and inclinations of a young disabled person for a particular vocational area before making a final decision on the nature and scope of a training measure. In many cases it is also necessary to prepare disabled persons for the type of training planned by giving them preparatory assistance specific to this training. The following measures are considered in addition to the actual training measures:

- benefits of vocational assessment and work testing,
- educational measures to prepare for vocational training or employment,
- specific types of basic training for blind persons and similar types of training,
- preparatory measures which are followed immediately by vocational further training.

## BENEFITS AIMED AT PARTICIPATION IN WORKING LIFE

**74** Vocational training cannot guarantee permanent participation in working life; it is nevertheless indispensable, since disabled persons can only survive competition in working life with non-disabled persons if they have the best possible vocational qualifications. It is therefore a primary task of educational and social policy together, also and particularly in case of problems on the labour market, to provide comprehensive training opportunities for disabled persons in order to give them the greatest possible degree of equality of opportunity when competing with non-disabled persons for permanent employment.

**75** According to section 33 of Book 9 of the Social Code, benefits aimed at participation in working life should include all forms of benefits necessary to sustain, enhance, generate or restore the earning power of disabled persons or persons in danger of becoming disabled in accordance with their capability, thereby assuring their permanent participation in working life, if possible. The selection of benefits aimed at participation in working life must take sufficient account of the aptitude, inclinations and earlier occupation of the disabled person as well as of the situation on and development of the labour market. It is ensured that disabled women enjoy equal opportunities in working life.

**76** Other benefits aimed at participation in working life, in addition to those mentioned under no. 67-73, are, in particular:

- assistance to keep or obtain employment, including counselling and placement services, training measures and mobility aids,
- preparation for employment, including basic training necessary due to the disability,
- vocational adaptation and further training, also if benefits include a school-leaving diploma required for participation in the measures,
- vocational training, also if benefits include, for less than half of the time, school-type training,
- bridging allowances in compliance with section 57 of Book 3 of the Social Code, to be provided by the rehabilitation funds according to section 6(1), no. 2-5,
- other forms of assistance to promote participation in working life in order to allow disabled persons to obtain and keep appropriate employment or self-employment.

There is, partially, a legal right to the benefits required in each individual case for participation in working life; partially, benefits are subject to dutiful discretion.

- 77** In numerous cases, benefits such as technical equipment for the workplace, aids for the disability-specific adaptation or for the acquisition of a motor vehicle - the details are regulated by the Motor Vehicle Assistance Regulation -, training subsidies and integration assistance to employers are sufficient to achieve the goal of rehabilitation. However, vocational training measures form the core of benefits aimed at participation in working life.
- 78** The primary objective of vocational training for disabled persons is training in an officially recognised training occupation under section 25 of the Vocational Training Act or section 25 of the Handicrafts Regulation Act. This is to take place, whenever possible, in a company or administration along with non-disabled persons; at the same time, this training is supplemented in accordance with the legislation of the Länder by attendance at a vocational school (dual training). On-the-job training is often made possible by providing training subsidies to employers.
- 79** The special circumstances of disabled persons are taken into account, where appropriate, for training in an officially recognised training occupation. This possibility is granted by section 48(1) of the Vocational Training Act and section 42b(1) of the Handicrafts Regulation Act. Recommendations adopted by the Central Committee of the Federal Vocational Training Institute contain information as to how the special concerns of disabled persons may be taken into account in intermediate, final and qualifying examinations. For instance, individual training units may be dispensed with where these are of secondary importance as far as subsequent employment is concerned. If there is a need to modify the standard required in examinations due to the candidate's disability, this fact will be recorded on the certificate.
- 80** For young people who cannot be trained in officially recognised training occupations, despite extra assistance and the possibility of derogating from training regulations, because of the nature or severity of their disability, section 48b of the Vocational Training Act and section 42d of the Handicrafts Regulation Act give the competent regional authorities the possibility of creating regulations on training outside officially recognised training occupations to take account of the special circumstances of disabled persons. The special training courses are intended to lead to a final qualification which can be used to seek employment in

the labour market and guarantees access to officially recognised training occupations. According to Federal Employment Agency statistics, the number of young disabled persons participating in these special training courses was 21,372 in December 2002. A large number of these special courses were in the metalworking trades, followed by housekeeping and the building and allied trades. To obtain some degree of uniformity in these training courses, the Federal Vocational Training Institute drafted, as part of the recommendations put forward by its Central Committee in 1978, standardised forms of nation-wide training courses in the form of model recommendations, the regional implementation of which is subject to the decisions of the relevant chambers and the other „competent bodies“ under the Vocational Training Act and the Handicrafts Regulation Act.

**81** The aforementioned principles governing the vocational training of disabled persons also apply to the further training of adults rendered necessary because of a disability; it is possible for adults, however, to be re-trained in other professions than the officially recognised training occupations. Section 37 of Book 9 of the Social Code provides that under normal circumstances the duration of payment of vocational further training benefits should not exceed two years.

**82** Where appropriate conditions exist, both disabled and non-disabled persons should receive training in companies and administrations; the same applies to further training of disabled adults or adults who are in danger of becoming disabled. Experience shows that such training offers particularly good opportunities for lasting participation in working life since it enables the trainees to grow accustomed to the conditions and demands of everyday working life, and trainees are normally taken directly into employment afterwards. If the company and the vocational school are willing and able to provide training while taking adequate account of disabilities, priority is also given to this kind of training for disabled persons.

At the end of December 2002, 147,254 disabled persons assisted by the Federal Employment Agency in the context of participation in working life were taking part in work preparation or vocational support measures, 54,729 of them in the new Länder. Of these persons, 59,651 completed vocational training courses and 33,917 further training courses, 24,356 took part in support courses and 18,049 in measures carried out in the context of the admission procedures and in the vocational training sections of workshops for disabled persons.

**83** Where training measures carried out within companies make it necessary, because of the nature or severity of the disability or in order for participation to be successful, to accommodate the persons away from their own or parental home, expenses for board and lodging are covered (section 33(7), no. 1, of Book 9 of the Social Code).

**84** Where it is required by the nature or severity of the disability or in order to guarantee successful participation, vocational training measures are implemented in special centres for vocational rehabilitation (section 35 of Book 9 of the Social Code). These centres for the initial training of young disabled persons (50 vocational training centres with around 13,000 places) and for the retraining of disabled adults (27 vocational retraining centres with around 15,000 places) are equipped with the necessary specialist (medical, psychological, educational and social) services. In the case of these measures, the rehabilitation fund responsible accepts all expenses related to the benefit, including board and lodging. The training programmes are to take account of the inclinations and abilities of persons undergoing rehabilitation and be geared to the progressing demands of the labour market and adapt these training programmes to developments in technology. The fact that the work done by vocational training and retraining centres is successful is, for example, shown by the good placement results of those who complete the courses at these centres: according to surveys carried out among former trainees one year after the payment of benefits has ended, they amount to roughly 70 per cent (covering a wide range of different professions). The success of participation in working life is due not least to the fact that participants in these benefit measures are continually introduced to modern technologies such as numerical control machines, computer-controlled drawing systems, modern data processing equipment and microelectronics and, therefore, have greater opportunities than others for employment in modern industries. For the future, however, increasing placement difficulties must be expected so that more follow-up care will be necessary for those having completed courses in rehabilitation centres.

**85** In addition to the vocational retraining and vocational training centres, particular importance is assigned to the centres for medical and occupational rehabilitation (18 with 3,915 places) where, in the case of certain (e.g. neurological) illnesses, initial steps of vocational assistance (e.g. assessment of aptitude for work and work testing, benefits for further training) are already initiated while benefits for medical rehabilitation are being paid. These centres bridge the gap between purely medical-based centres for acute treatment and primary care on the one

hand and the occupational rehabilitation centres on the other, which provide training and further training.

**86** When paying benefits aimed at participation in working life, the rehabilitation fund responsible usually provides cash benefits (training allowance for initial training, bridging allowance to assure subsistence), provided that the eligibility criteria of that particular fund are satisfied, and also pays social security contributions (section 44(1), no. 2, of Book 9 of the Social Code). The bridging allowance usually amounts to 68 per cent of previous regular earnings (80 per cent of previous earnings, but no more than the full amount of previous net earnings), rising to 75 per cent if the beneficiary has at least one child within the meaning of section 32(1), (3) to (5) of the Income Tax Act or if the spouse with whom the disabled person shares a home is unable to obtain gainful employment due to taking care of the beneficiary or because this spouse is in need of care also and is not entitled to benefits from the long-term care insurance. In addition to this, other supplementary benefits and benefits to guarantee subsistence are possible such as:

- rehabilitation sports or functional training if prescribed by a doctor (section 44(1), no. 3, of Book 9 of the Social Code),
- travelling expenses (section 53 of Book 9 of the Social Code),
- domestic help or help at work (section 54(1), (2) and (4) of Book 9 of the Social Code), and
- costs linked with child care (section 54(3) of Book 9 of the Social Code).

**87** For a course of study at a university, college or similar educational establishment, disabled persons can normally only be given assistance according to the Federal Education Assistance Act; in many instances, however, there is also a need for intervention by social assistance, which also classifies this type of training as vocational training for disabled persons (section 13 of the Integration Assistance Regulation).

**88** Special forms of assistance are often required to facilitate participation in working life - for example, immediately after successful completion of some form of vocational training. To facilitate the taking up of employment, the relevant stipulations in section 33 of Book 9 of the Social Code provide for benefits to the disabled persons themselves or their employers. Forms of assistance available to the persons concerned include

- the coverage of costs linked with course fees, examination fees, expenses for study aids, working clothes and working equipment,
- motor vehicle assistance according to the Motor Vehicle Assistance Regulation,
- compensation of unavoidable loss of income arising for the severely disabled person or a person accompanying the disabled person due to travelling to and from training measures and job interviews,
- costs for work assistance which the disabled person may need in order to find a job,
- costs for aids which may be necessary due to the type or severity of the disability in order to exercise an occupation, participate in benefits aimed at participation in working life or increase the safety of the disabled person travelling to and from the workplace and at the workplace itself, unless the employer has an obligation in this respect or such benefits can be granted as medical benefits,
- costs for technical aids necessary to exercise an occupation due to the type or severity of the disability, and
- reasonable costs for procuring, equipping and maintaining a home fit for disabled persons.

**89**

Of the funds responsible for benefits aimed at participation in working life, the Federal Employment Agency is almost exclusively responsible for the initial participation of disabled persons in working life and in many cases bears the responsibility for restoring participation in the event of disabilities occurring at a later stage. The accident insurance and social compensation funds, on the basis of their obligations, have a clearly defined group of persons to assist. Pension insurance provides discretionary benefits aimed at participation in working life especially where the earning capacity of an insured person, after 15 years of paying contributions, is substantially threatened due to a potential disability, where a pension on account of reduced earning capacity is paid, or would have to be paid without these benefits, or where such benefits are to be provided directly after benefits for medical rehabilitation granted by the pension insurance funds.

**90**

Because of the comprehensive nature of benefits aimed at participation in working life from other funds, social assistance benefits are relevant only in individual cases. However, these benefits are of great importance for workshops for disabled persons (see also nos. 108-112). To assist disabled persons in obtaining a type of work which is suited to their

disability, assistance is also given as part of integration assistance to support work at home. In all other instances, the general regulations on working at home (Homework Act) apply to disabled persons.

- 91** For the whole area of benefits aimed at participation in working life, the Federal Employment Agency also has the special task, over and above its function as one of the funds responsible for rehabilitation, of producing, upon request of another rehabilitation fund, a report on the need for, the type and the scope of benefits, while taking into account their effectiveness with regard to prospects in the labour market (section 38 of Book 9 of the Social Code).

## SPECIAL FORMS OF ASSISTANCE FOR PARTICIPATIONS OF SEVERELY DISABLED PERSONS IN WORKING LIFE

- 92** To improve the opportunities of severely disabled persons in working life, special forms of assistance are available, in addition to the benefits aimed at participation in working life, which can also be claimed by severely disabled persons under Part 2 of Book 9 of the Social Code. In order to secure employment for the disabled persons covered by this legislation and at the same time improve the individual conditions, this Act provides for the following, in particular:

- the duty of public and private employers to fill 5 per cent of the positions with severely disabled persons or pay a compensatory levy for unfilled compulsory places (sections 71 et seq. of Book 9 of the Social Code),
- special responsibilities of employers toward severely disabled employees (sections 81 et seq. of Book 9 of the Social Code),
- a special protection against unlawful dismissal for severely disabled employees following expiry of a six-month period (sections 85 et seq. of Book 9 of the Social Code),
- protection of the interests of severely disabled persons at work by the representatives for severely disabled persons (sections 93 et seq. of Book 9 of the Social Code), and
- supplementary benefits granted by the Federal Employment Agency and the integration offices to severely disabled persons to facilitate their participation in working life (sections 101 et seq. of Book 9 of the Social Code).

- 93** On the basis of the „Points of reference for those issuing medical reports“ published by the Federal Ministry of Health and Social Security,

the compensation office determines which persons are to be classified as severely disabled. The severity of the limitation is expressed as a „degree of disability“ in increments of ten degrees between 10 and 100. The fact that this determination is made on a general basis and not in relation to a particular job means that severely disabled persons are also and particularly protected in jobs where their disability has little effect. Severely disabled persons may receive a pass upon application, which verifies the degree of disability ascertained and makes it easier to exercise certain rights and obtain compensation for disadvantage. If disabled persons having a degree of disability of less than 50 but of at least 30 are unable, because of their disability, to find or retain suitable employment, they are accorded equal status with severely disabled persons by the employment agency upon application.

**94** Part 2 of Book 9 of the Social Code obliges all employers to examine whether persons with severe disabilities or persons of equal status could be employed when vacancies are to be filled. The same Act also provides for work to be adapted to accommodate the disability by

- equipping workplaces with the requisite technical equipment,
- designing and maintaining the working environment, furnishings, machinery and appliances with the aim of allowing the highest possible number of severely disabled persons to be employed,
- employing severely disabled persons in such a way that they are able to fully develop and use their knowledge and skills, and
- promoting occupational advancement and facilitating participation in on-going vocational further training.

The special regulations and principles for filling civil service and judicial posts are also to be formulated in such a way that the engagement and employment of severely disabled persons is promoted and there is an appropriate percentage of severely disabled persons amongst civil servants and judges.

**95** The employment obligation is of particular importance for securing the participation of severely disabled persons in the labour and training places market. Employers with a workforce of 20 or more are obliged to ensure that at least 5 per cent of their workforce is made up of severely disabled persons. This obligation applies not only to private, but also to public employers. In calculating compulsory places, the employment office may take into account more than one, at most three, compulsory places for one severely disabled person if participation of that person in working life is particularly difficult.

**96** Fulfilling the employment obligation is not always easy if no suitable severely disabled candidate is available when a vacancy arises; yet solutions can often be found with good will and by drawing upon all available forms of assistance. Nevertheless, many employers obliged to employ severely disabled persons are still not willing to meet their obligation and pay the compensatory levy.

**97** Of the 151,595 employers who were subject to the employment obligation in October 2001, 30,900 (around 20 per cent) had fulfilled their obligation or were above the obligatory number. However, 80 per cent of all employers failed to meet their obligations or did not meet them in full. In October 2001 the employment rate amounted to 3.8 per cent in Germany.

**98** The compensatory levy payable by employers monthly per unfilled compulsory place amounts to

- 105 EUR in case of an annual average employment quota of 3 per cent up to less than 5 per cent
- 180 EUR in case of an annual average employment quota of 2 up to less than 3 per cent
- 260 EUR in case of an annual average employment quota of less than 2 per cent.

The revenue from the compensatory levy may only be used for participation purposes of severely disabled persons; the details are embodied in the Severely Disabled Persons Compensatory Levy Regulation.

**99** The revenue from the compensatory levy - around 588 million EUR in 2002 - is used primarily for the engagement and employment of severely disabled persons, which means that the greater part of it is returned to employers. A 55 per cent share goes to the integration offices of the Länder (which used to be called „main welfare offices“) where it is used for benefits to boost the supply of jobs and training places for severely disabled persons, benefits towards supplementary assistance in working life and other measures for the participation of severely disabled persons. Forty-five per cent of the revenue is invested in the Compensation Fund set up by the Federal Ministry of Health and Social Security to promote nation-wide benefits aimed at participation of severely disabled persons in working life. The Compensation Fund allocates to the Federal Employment Agency the resources necessary for the special promotion of the recruitment and employment of severely disabled persons. In addition, it promotes nation-wide projects for participation of severely disabled persons in working life.

**100**

Special promotion of engagement and employment of severely disabled persons concerns those severely disabled persons who, as a result of their disability, old age or other reasons, have particular difficulties on the labour or training places market. This includes those severely disabled persons who require a special assistant or other exceptional expenses to enable them to work, whose employment will permanently cause exceptional expenses for the employer due to their disability, whose performance is obviously reduced considerably on a permanent basis due to their disability, or whose degree of disability caused solely by a mental or psychological disability or pathological fits reaches a level of 50, or who due to the type and severity of their disability do not have a vocational training diploma as defined under the Vocational Training Act, as well as severely disabled persons aged 50 and over (section 72(2) of Book 9 of the Social Code). Where employers who fulfil or are not subject to the employment obligation engage severely disabled persons from the above groups, they may be entitled in accordance with section 219 of Book 3 of the Social Code to receive wage cost subsidies from the Federal Employment Agency of up to 70 per cent of the wage paid to the severely disabled person for up to three years, and in the case of older severely disabled persons, for up to eight years.

**101**

Supplementary assistance in working life is implemented by the integration offices or - on their behalf - by the local welfare offices in close co-operation with the Federal Employment Agency. The intention is to ensure that the social status of severely disabled persons does not decline, that they are employed in jobs in which they are able to fully use and develop their skills and knowledge, and that they are enabled to assert themselves at work and in competition with non-disabled persons.

**102**

In addition to the financial assistance provided by the integration offices, in particular for a disability-suited equipment of training places and workplaces and to compensate for extreme difficulties resulting from the employment of particularly severely disabled persons, the other forms of assistance they offer also play an important role. The counselling of severely disabled persons, mainly at work, and company visits are of particular significance. The integration offices may also involve independent funds in the provision of psychological and social care as part of their supplementary assistance programme in working life; such care is important not only for psychologically disabled persons but for all severely disabled persons and persons of equal status (in the latter instance, the need for this type of care will depend upon the circumstances in each individual case).

**103**

On the basis of experience and findings gained in model projects, and by involving other existing services, local specialist services for integration were set up all over the country. These services are to support employment agencies, the other rehabilitation funds and integration offices in fulfilling their tasks, especially when it comes to counselling severely disabled persons before taking a job, when looking for a job, in application procedures, after they have taken a job, and to assisting them in gaining mental and social stability; moreover, they can provide information, advice and support to companies and administrations. In addition to focusing on severely disabled persons who are unemployed or in danger of becoming unemployed, the activities of the specialist services will also concentrate on the transition of severely disabled persons from workshops for disabled persons to employment in the general labour market, and from school to employment under the conditions of the general labour market, if the persons concerned could otherwise only be employed in a workshop for disabled persons.

**104**

A further important instrument for securing and preserving jobs for severely disabled persons is the special protection against dismissal; this commences six months after the start of employment. The employer's obligation to obtain the approval of the integration office before giving notice of dismissal is intended primarily to examine all forms of assistance which might secure continuing employment and to weigh the interests of both parties; should these measures serve to show that the continued employment of the severely disabled person is unreasonable, given the circumstances of the individual case, the dismissal is approved. This is what happens in the majority of proceedings initiated; consequently, this protection against dismissal is not an obstacle to recruitment - a view which is still held by many employers despite increased information.

**105**

The special interests of severely disabled persons are looked after by works and staff councils in companies and administrations. Where more than five members of permanent staff are severely disabled, a spokesperson as a representative for severely disabled persons is to be elected. The main task of this representative is to monitor adherence to all provisions in favour of disabled persons and to support these persons by providing advice and assistance. The representatives of severely disabled persons are able, on the basis of their specialist knowledge and experience of procedures in companies and administrations, to make a valuable contribution to improving participation of severely disabled persons in working life:

- Employers should normally ensure that these representatives are consulted when determining whether vacant jobs or training places might be suitable for severely disabled persons, particularly those who are registered with the employment agency as unemployed or seeking employment.
- The representatives are entitled to be fully informed and to be heard. If a measure has been determined without their involvement, its implementation or execution must be suspended until the representatives have been involved.
- They must be included in all monthly discussions between the employer and the works or staff councils, since these may deal with matters affecting severely disabled persons.
- They must maintain constant contact with the local employment agency and with the integration office and cooperate closely with these authorities (section 99, clause 2, of Book 9 of the Social Code).

Details of the election of representatives are set out in the Severely Disabled Persons' Election Regulations.

**106**

According to section 104 of Book 9 of the Social Code, the Federal Employment Agency is responsible for the provision of vocational guidance and the placement of severely disabled persons into training and employment; it is also responsible for counselling employers in cases where severely disabled persons may be recruited to fill vacant jobs or training places. Special counselling and placement centres have been set up at the employment agencies for the employment promotion and vocational assistance of disabled persons.

**107**

The compensation for disadvantages experienced by severely disabled persons includes entitlement to a paid supplementary leave of regularly five days per year (section 125 of Book 9 of the Social Code). Severely disabled persons must also be exempted on their own request from working overtime (section 124 of Book 9 of the Social Code).

## WORKSHOPS FOR DISABLED PERSONS

**108**

For disabled persons who, because of the nature or severity of their disability and in spite of every assistance, are not or not yet able to participate (again) in the general labour market, workshops for disabled persons offer suitable vocational training and employment while paying wages that are commensurate with the disabled persons' performance

(section 136 of Book 9 of the Social Code). According to this provision, the workshops are open to all those disabled persons, irrespective of the nature and severity of their disability, who are capable of doing a minimum amount of economically useful work, at the latest after having participated in measures in the vocational training section; the workshops must make it possible for the disabled employees to develop, enhance or recover their skills, abilities and earning capacity and, in so doing, further develop their personality. The technical requirements to be met by workshops for disabled persons and the approval procedure are set down in the Workshop Regulation. In the year 2003, around 186,000 disabled persons were employed in 202,000 approved workshops.

**109** The workshops for disabled persons are also meant for persons who, because of their disability, require special personnel to provide care and individual assistance for them and who, therefore, receive care and assistance in special support groups. Disabled persons who do not or have yet to meet the requirements for employment in a workshop for disabled persons may be admitted to institutions affiliated to the workshop.

**110** To prepare for employment in the workshop, benefits are awarded in accordance with section 40 of Book 9 of the Social Code for up to 3 months to promote participation in measures in the entry procedure offered by approved workshops for disabled persons, and in the vocational training section, benefits are awarded for up to 2 years, with the vast majority of them being granted through the Federal Employment Agency. It is the task of the workshops to assist disabled persons in such a way that by the time they have completed the vocational training measures, they are in a position to deliver a minimum amount of economically useful work; beyond this primary aim, the workshops' task is to assist and encourage each individual in such a way that he attains his full potential. To fulfil these tasks, workshops for disabled persons must offer the widest possible range of vocational training and actual work opportunities.

**111** Assistance in the work section is generally one of the functions of integration assistance for disabled persons, in accordance with section 40(1), no. 7, and section 41 of the Federal Social Assistance Act in conjunction with section 41 of Book 9 of the Social Code; according to section 100 of the Federal Social Assistance Act, the bodies responsible are the social assistance funds, which in 2002 raised around 3,000 million EUR for this purpose. Wages for disabled persons working in the workshops amount to an average of 160 EUR per month. In addition, those working in workshops and earning up to 325 EUR receive an employ-

ment promotion allowance of 26 EUR per month. The involvement of disabled employees in workshops for disabled persons is governed by the Regulation on the Involvement of Disabled Persons in Workshops.

- 112** The disabled persons who are employed in the work section of the workshops normally have a legal status similar to that of employees. They are compulsorily insured with sickness insurance, long-term care insurance, pension insurance and occupational accident insurance funds. After a period of employment of least 20 years they receive a pension on account of totally reduced earning capacity from the statutory pension insurance.

## BENEFITS AIMED AT PARTICIPATION IN COMMUNITY LIFE

- 113** In accordance with the fundamental regulations contained in sections 1 et seq. and 4 of Book 9 and section 10 of Book 1 of the Social Code, the real objective of all types of provision and efforts is for disabled persons and persons who are in danger of becoming disabled to participate fully in the life of society. Specific assistance aimed at the participation of disabled persons in community life, which serves this very purpose along with the medical and vocational participation-oriented benefits, is provided by the public youth welfare and social assistance funds as the rehabilitation funds with the widest range of tasks, and also by the occupational accident insurance funds and the war victims assistance funds which provide assistance within the framework of the social compensation law for the specific group of people for which they are responsible in each instance.

- 114** In the framework of integration assistance for disabled persons in accordance with sections 39 et seq. of the Federal Social Assistance Act in conjunction with the Integration Assistance Regulation issued in accordance with section 47 of the above Act, the personal scope of social assistance covers as a rule all groups of disabled persons while the youth welfare funds grant their benefits aimed at participation only to psychologically disabled children and juveniles and those in danger of developing such a disability according to section 35a of Book 8 of the Social Code.

- 115** Benefits aimed at participation in community life comprise in particular:

- provision of non-medical and non-vocational aids,
- medical-educational offers for children who do not attend school yet,

- assistance in developing practical knowledge and skills which are necessary and suitable to enable disabled persons to reach the degree of participation in community life possible for them,
- assistance in promoting communication with the disabled person's social environment,
- assistance in obtaining, furnishing and maintaining a home which corresponds to the special needs of disabled persons,
- assistance in leading a self-determined life in a home in which care can be provided if necessary,
- assistance in participating in community and cultural life.

In this context, it is also important to mention the waiving of radio and television fees for severely affected or financially disadvantaged disabled persons, as set down in the regulations of the Länder.

**116**

Provision of means of support and technical aids in the broadest sense serves the objective of achieving the most comprehensive degree of self-reliance and independence. They include in particular communication and mobility aids for people with hearing, sight and speech disabilities, but also objects which are part of everyday life. These are supplemented by aids and concessions with regard to postal and telecommunications services (particularly reduced fees, special communications equipment, etc.).

**117**

An essential prerequisite for the participation of disabled persons is that the planning and design of the environment take into account the needs of people with disabilities. This includes the building of disability-suited housing which does not only allow as much independence as possible but also makes it easier to mix with non-disabled persons, and in which care may be provided, if necessary. In accordance with the Second Housing Act, housing for severely disabled persons benefits from special promotion. The Housing Allowance Act also contains special concessions for severely disabled persons. The Act to Reform the Law of Tenancy makes it easier for disabled persons to use rented property and facilitates necessary structural changes of the building.

**118**

For disabled persons living in homes, the Homes Act and the regulations issued on its basis determine legal, architectural and care-related minimum requirements and provide for the involvement of the residents of the home.

**119**

Participation in community life is also promoted by the elimination of obstacles to mobility. Legal regulations, DIN standards and assistance provisions make it possible to take the concerns of disabled persons into appropriate account in the areas of building, accommodation and transport. The aim is to create an obstacle-free, safe environment for disabled persons, and in doing so to make it possible for these persons to live their lives as independently as possible of outside help. As a result, many roads, paths and squares have been designed with disabled persons in mind, and most public buildings are now accessible to disabled persons. By considering the interests of disabled persons when building and modernising railway stations (e.g. by installing ramps and lifts) and the German Railways' use of service carriages for long-distance travel, allowing sufficient room for people in wheelchairs, it is now becoming possible or easier for even severely physically disabled persons to use the railways.

**120**

The regulations regarding the free conveyance of severely disabled persons by local public transport in accordance with sections 145 et seq. of Book 9 of the Social Code serve to improve the mobility of severely disabled persons who, as a result of their disability, are considerably restricted in this regard. Prerequisite for the „free transport“ as mentioned above is - in addition to the recognition of the relevant disabilities by the compensation office - that the disabled person contributes  $\approx$  60 per year to an annual travel pass. Blind and incapacitated severely disabled persons as well as those with very limited financial means receive these travel passes free of charge. Special regulations apply for persons who were entitled to free travel before 1979 in accordance with the then applicable guidelines. Where the disabled person needs to be accompanied at all times, the companion always travels free of charge, also in the case of long-distance travel by rail. Further concessions to facilitate travel by public transport - including travel by ship or plane - and by road can be found in the „Guide for Disabled Persons“ issued by the Federal Ministry of Health and Social Security and updated at regular intervals.

**121**

Persons who, because of their disability, are prevented from using either public means of transport or taxis are increasingly offered special transport services by local authority institutions, assistance organisations and welfare associations. The regulations for their use issued by the towns and districts which mostly cover the costs are not uniform.

**122**

Disabled persons who, because of the nature and severity of their disability, are reliant on the regular use of a motor vehicle for purposes of

their participation may receive, in the context of integration assistance for disabled persons, an appropriate amount of assistance towards acquisition of a motor vehicle as well as help in obtaining a driving licence and for the running and maintenance of the motor vehicle (sections 8 and 10 of the Integration Assistance Regulation). This type of assistance is payable - besides the assistance for the purposes of participation in working life according to the Motor Vehicle Assistance Regulation - under certain circumstances in order to make participation in community life possible.

**123** Leisure time and holidays have particular significance for disabled persons as a valuable form of compensation for the lack of social contact which may be apparent in other areas of life. Above all, leisure time and holidays together with non-disabled persons contribute greatly to participation in the life of society. Public funds are used to provide disabled persons and their relatives with specific information on leisure activities and holidays. In addition, the building and equipping of non-profit making family holiday homes is supported by funds at federal and at Länder level. The broad framework of benefits granted in terms of integration assistance for disabled persons makes it possible in individual cases for the disability-specific costs associated with leisure activities and holidays to be assumed.

**124** Contact with non-disabled persons and the associated participation in community life is particularly well-served by sport for disabled persons in the form of a leisure activity, popular sport or competitive sports. The Federal Government and the Länder are making joint efforts to continue the necessary development of sport for disabled persons and its financing.

## EDUCATION, INFORMATION AND ADVICE

**125** Education, information and advice provided by the social benefit funds are the main source of information. Explicit general regulations in this context are embodied in sections 13, 14 and 15 of Book 1 of the Social Code. In accordance with sections 22 et seq. of Book 9 of the Social Code, it is the task of one-stop service centres of the rehabilitation funds in all counties and cities to

- provide information on conditions of qualification for benefits, on benefits paid by the rehabilitation funds, on special support in working life and on administrative procedures,

- assist individuals in identifying their need for rehabilitation, in using participation-oriented benefits and special support in working life and in fulfilling their obligation to cooperate with the respective fund,
- identify the individuals' competent rehabilitation fund, ensure that applications are clear and appropriate and forward them to the competent rehabilitation fund,
- inform the competent rehabilitation fund if an individual has a need for rehabilitation which presumably will require a medical assessment,
- in cases in which individuals have an obvious need of participation-oriented benefits, comprehensively prepare the documents for the competent rehabilitation fund in a way that the rehabilitation fund can make a decision without delay,
- guide and support the disabled person or the person who is in danger of becoming disabled until the rehabilitation fund has made a decision or is paying benefits,
- encourage the rehabilitation funds to make decisions and pay benefits without much delay, and
- coordinate and mediate between various rehabilitation funds and parties involved also during the period of benefit payment.

## 126

In addition, the following have special advisory obligations with regard to disabled persons:

- doctors, also doctors appointed at Land level, in accordance with sections 61 and 62 of Book 9 of the Social Code as well as section 92(1), no. 8, and section 112(2), no. 4, of Book 5 of the Social Code,
- social assistance services as part of personal assistance in accordance with section 8 of the Federal Social Assistance Act.

## 127

In view of the many and varying benefits and other forms of assistance which can be considered for assisting the participation of disabled persons and persons who are in danger of becoming disabled, reference should also be made to section 16 of Book 1 of the Social Code. In accordance with this section, the benefit funds are obliged to see to it that clear and appropriate applications are filed in time, and that incomplete information is completed.

## HISTORICAL DEVELOPMENT

**128**

As the first uniform legal bases were created in social law in Germany around 100 years ago, the era of comprehensive and „all-round“ regulations of the type seen today, in particular in section 4 of Book 9 and section 10 of Book 1 of the Social Code, had not yet arrived; regulations were rather made for individual groups of affected people and their specific problems. Thus the competent funds soon began, on the basis of the 1884 Occupational Accident Insurance Act, to provide medical services as quickly as possible - since 1890 also in fund-owned accident hospitals - with the aim to effectively limit the consequences of accidents at work and at the same time reduce the amount of pensions that would have been payable otherwise. Also in invalidity and old age insurance, it was already legally possible, as early as 1889, for the funds to assume the costs of medical care if illness or accident threatened to cause incapacity for work and a need for invalidity pensions. The principle of „rehabilitation before payment of pension“ was clearly already in operation. The uniform regulations on war victims welfare, first issued in 1919, were also intended to reintegrate war victims into gainful employment whenever possible. These regulations were supplemented by provisions, which also date back to 1919, which obliged employers to employ severely disabled persons, namely victims of war and accidents. For the integration of disabled persons not belonging to the groups mentioned above, the first special uniform regulations were introduced in 1924 as part of the Principles of Welfare where disabled persons were regarded as „healable poor“. Similarly, the tasks of placement into employment and unemployment insurance regulated by law in 1927, included from the very beginning counselling and placement services for disabled persons, which were supplemented in 1969 - as part of an „active labour market policy“ - with extensive responsibilities for tasks related to vocational rehabilitation.

**129**

In the decades to follow

- the objective of integrating disabled persons and persons in danger of becoming disabled into working life and into society as a whole was pursued with increasing vigour before and after the era of National Socialism,
- therefore, the principle of as early an intervention as possible was observed more and more strongly and, not least,
- positive approaches, experiences and examples from individual social benefit areas were transferred on an increasingly intensive scale into other areas.

## 130

At the beginning of the seventies, the various approaches and traditions were brought together and, in accordance with the principle of finality, the social benefits for the integration (now: participation) of, if possible, all disabled persons were harmonised as far as possible. This was effected

- through the law on the further development of the legislation on severely disabled persons of 1974, by which, along with a variety of other improvements,
  - the protected group of people was extended to include all severely disabled persons irrespective of the nature or cause of their disability, and
  - uniform basic requirements were established for workshops for those disabled persons who are unable to be employed on the general labour market, because of the nature or severity of their disability, and also
- through the law on the adjustment of benefits for rehabilitation, also from 1974, by which:
  - sickness insurance was incorporated in the group of rehabilitation funds,
  - for all social insurance funds, the war victims assistance fund and the Federal Employment Service, the benefits in kind for medical and vocational rehabilitation and the wage compensation benefits payable during rehabilitation measures were largely standardised and further developed in terms of their content, and
  - a series of uniform principles was established for all social benefit sectors and funds with the objective of achieving lasting and effective integration of disabled persons and persons who are in danger of becoming disabled, and finally
- by incorporating the „social right“ of disabled persons to integration in the General Section of the Social Code, 1975.

## 131

With the Unification Treaty of 3 October 1990, the law already applicable in the Federal Republic of Germany also became effective in the new Länder; the law previously in force in East Germany ceased to have effect. However, there were some exceptions from this principle, and the amount of the compensation levy according to the Severely Disabled Persons Act for unfilled compulsory places was fixed at a uniform rate of DM 200. The task of creating uniform living conditions in and between both parts of Germany will still require time and major effort.

**132**

It became clear, already during the legislative procedures for the laws mentioned, but even more so after they had come into effect and during their application, that the task of adjusting the legal bases of social benefits granted on account of a disability, and of ensuring that they were coordinated more effectively in the interests of disabled persons, had only been partially achieved. In addition to many minor discrepancies which were to increase in number rather than be eliminated in the course of the legal developments of the following years, adjustments and corrective action are needed in the following respects:

- the provisions governing the various benefit sectors covered by the Rehabilitation Adjustment Act have not been fully coordinated with each other and are far from being in harmony with those on social assistance, and
- the regulations of the Severely Disabled Persons Act are not coordinated with those for rehabilitation.

**133**

The German Bundestag demanded on several occasions that the legal provisions for the integration of disabled persons be consolidated in a uniform and clear format for incorporation into the Social Code as soon as possible. During the past years, the policy for disabled persons underwent a paradigm shift. The inter-party motion for a resolution „The integration of people with disabilities is an urgent political and societal task“, which the German Bundestag adopted unanimously on 19 May 2000 (Printed Matter of the Bundestag 14/2913), notices a far-reaching transformation of the self-concept of disabled persons and of the basis of disability policy. „Welfare and care for disabled persons no longer constitute the focus of political efforts, but rather their self-determined participation in the life of society and the removal of all obstacles which conflict with their equality of opportunities.“ By adding a second sentence to Article 3(3) of the Basic Law in 1994, the German Bundestag had „created a political and societal obligation to actively undertake efforts to integrate people with disabilities into family, professional and everyday life. Honouring this obligation is an urgent political and legislative task, especially given the ethical background and historical experience in Germany.“ The resolution sees a need for „legislation which satisfies the right of people with disabilities to support and solidarity - being unquestioned and universal civil rights -“ as a prerequisite for the objective of „enabling people with disabilities to lead an independent life“. Book 9 of the Social Code is to „establish, instead of divergence and confusion, citizen-oriented approaches and greater efficiency in the existing rehabilitation legislation on the basis of a common law and uniform rehabilitation and disability policy practice.“

Book 9 of the Social Code, which has been in force since 1 July 2001, meets these prerequisites; it was unanimously adopted by the German Bundestag on 6 April 2001 and approved - again unanimously - by the Second Chamber of Parliament, the Bundesrat, on 11 May 2001. The law distinguishes itself by strongly concentrating on the persons concerned and on self-help approaches. It moves the individual into the focus of attention, along with the ideas of participation and self-determination. It gives disabled persons and persons who are in danger of becoming disabled the opportunity to manage their affairs on their own and under their own responsibility to as great an extent as possible. The special benefits they receive for medical rehabilitation and participation in working and community life offer the kind of support and solidarity they need in order to avoid, compensate for or overcome disabilities and to reach equal participation in society. To this end, Book 9 of the Social Code has improved the individual legal possibilities in the area of rehabilitation and participation.