

MAT MUST state findings of fact NOT just conclusions drawn.

LB/MB

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SOCIAL SECURITY ACTS 1975 TO 1984

APPEAL FROM DECISION OF MEDICAL APPEAL TRIBUNAL ON A QUESTION
OF LAW

DECISION OF THE SOCIAL CHIEF SECURITY COMMISSIONER

Medical Appeal Tribunal: Leeds

Original Decision Case No: 145/10/84

1. My decision is that the medical appeal tribunal erred in law for the reasons which I shall give in its decision of 31 January 1984 and the decision should be revised accordingly, by a differently constituted tribunal. The claimant's claim is for a renewal of a mobility allowance. On 16 March 1979 she suffered a spontaneous subarachnoid haemorrhage. Investigations at the time by way of arteriography showed three aneurysms and marked spasm or narrowing of the blood vessels on the right side of the brain. As a result of the haemorrhage and the associated spasm and narrowing of the blood vessels on the right side of the head the claimant developed left hemiplegia. She was awarded a mobility allowance for 1 year in 1979 and then for 2 years in 1980. In connection with her renewal claim made on 23 March 1982 the medical practitioner on 13 May 1982 reported his opinion that the claimant was not virtually unable to walk and that opinion was upheld by the medical board on 28 September 1982 and on appeal by the medical appeal tribunal on 31 January 1984. From that decision the claimant with my leave has appealed.

2. Entitlement to a mobility allowance is provided for by section 37A of the Social Security Act 1975, subsection (1) of which runs as follows:-

"37A.-(1) Subject to the provisions of this section, a person who satisfies prescribed conditions as to residence or presence in Great Britain shall be entitled to a mobility allowance for any period throughout which he is suffering from physical disablement such that he is either unable to walk or virtually unable to do so."

As Lord Scarman said in Lees v. Secretary of State for Social Services [1985] 2 WLR 805 at 809 - "... the section read as a whole does appear to emphasise physical difficulty in the act of walking."

The relevant regulation is regulation 3(1) of the Mobility Allowance Regulations 1975 [SI 1975 No. 1573]. It is as amended as follows:-

"3.-(1) A person shall only be treated, for the purposes of section 37A, as suffering from physical disablement such that he is either unable to walk or

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virtually unable to do so, if his physical condition as a whole is such that, without having regard to circumstances peculiar to that person as to place of residence or as to place of, or nature of, employment -

(a) he is unable to walk; or

(b) his ability to walk out of doors is so limited, as regards the distance over which or the speed at which or the length of time for which or the manner in which he can make progress on foot without severe discomfort, that he is virtually unable to walk; or

(c) the exertion required to walk would constitute a danger to his life or would be likely to lead to a serious deterioration in his health."

3. The Medical Appeal Tribunal gave its reasons and findings in the following terms:-

"All submissions were considered and the scheduled evidence examined. We examined the claimant and confirmed the presence of left hemiparesis with spasticity affecting the arm more than the leg. There has been the usual partial recovery after dense haemiplegia and in our opinion she is physically capable of walking at least 100 yards.

→ We are satisfied that much of the walking difficulty and also the pain in her foot and ankle, breathlessness, exhaustion, headaches and dizziness are psychogenic in origin not due to physical disease. Walking for short distance would not endanger her health.

The physical effects of the hemiparesis do not seriously impair her speed and manner of walking and in our opinion the observed deficiencies in this respect were psychogenic in origin.

We find that she is not unable to walk or virtually unable to walk, and does not fulfill the requirement of the Mobility Allowance Regulations.

We confirm the Board's decision."

4. A medical appeal tribunal must state its findings on the primary facts which are in dispute and not just the conclusions drawn from them; it is particularly important where a specific contention is addressed to the tribunal but is rejected that reasons for the rejection are given - see the decision of a Tribunal of Commissioners RM/1/83 paragraphs 9 and 10. There was before the tribunal a considerable body of evidence that the claimant's walking ability was reduced if she was not walking on a flat surface and had to contend, for example, with pavements. The criterion in regulation 3(1)(b) is as to the ability of a claimant to walk out of doors; the tribunal has made no findings specifically with regard to the capacity of the claimant in this case to walk out of doors notwithstanding that that was the statutory criterion and it was as to that that evidence was before it. This is an error of law and alone would require me to allow the appeal.

5. However, there are other reasons which require me to allow the appeal. The tribunal introduced into its reasons the reference to causation by "physical disease". That is not the statutory language, which refers to "physical disablement", and it is not possible to be sure that the tribunal accordingly applied the correct criterion.

6. Moreover, regulation 3(1)(b) requires findings and not just conclusions on the primary facts as to inability to walk through physical disablement; while it is clear that the tribunal intended to disregard inability to walk through deficiencies which were psychogenic in origin it has not found with any clarity what disability to walk in fact it ascribed to physical disability. Also, if as appears, the tribunal was of opinion that the disability to walk stemmed principally from a mental condition operating independently of any disabling physical condition (the phrase comes from Decision R(M)2/78 paragraph 17) then in the circumstances of this case the claimant was in my judgment entitled to see how (given the evidence) the tribunal reached that conclusion.

7. The medical appeal tribunal which will reconsider this matter may wish to consider the discussion of physical and mental causation of inability to walk in paragraphs 17 and 18 of Decision R(M)2/78.

(Signed) Leonard Bromley
Chief Commissioner

Date: 2nd August 1985.