

Mobility allowance - "MPT" must make findings of fact on ability to walk out of doors - danger to blind person of unseen obstacles may mean virtually unable to walk.

ATH/3/LS

Commissioner's File: CM/107/1986

DHSS File: B.51023/1119

SOCIAL SECURITY ACTS 1975 TO 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Nancy Webster (Mrs) on behalf of Andrew Mark Webster

Medical Appeal Tribunal: Leeds

Original Decision Case No: 165/02/85

1. I allow this appeal. The decision of the medical appeal tribunal dated 31 July 1985 was erroneous in law and the case must be reheard and redetermined by a differently constituted medical appeal tribunal.

2. The claimant's son was born in 1964. He is, and has been since his birth, deaf and blind (or partially blind) as a result of maternal rubella during pregnancy. Attendance allowance is paid in respect of her son. On 30 April 1984 a claim for mobility allowance was received from the claimant on behalf of her son. On 9 October 1984 her son was examined by a medical practitioner who found that he was not unable to walk or virtually unable to walk, and the claim was, accordingly, disallowed by the adjudication officer. The claimant appealed and on 21 January 1985 the medical board also found that her son was not unable to walk or virtually unable to walk. The claimant appealed and on 31 July 1985 the medical appeal tribunal confirmed the decision of the medical board. The claimant now appeals with my leave.

3. Regulation 3(1) of the Mobility Allowance Regulations 1975 provides:

"A person shall only be treated...as suffering from physical disablement such that he is either unable to walk or 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."

The claimant makes the claim under regulation 3(1)(b).

4. I should point out that page 19 of the case papers is wholly illegible. But I do not think that that affects my decision in the present case.

5. The claimant's son uses a hearing aid and carries a deaf/blind mobility stick. The gist of the evidence of the claimant is that her son needs guidance and supervision of another adult to walk to a specifically designated place (page 3 of the file). If he walks on his own,

he is extremely slow and can walk only along a well known route and his life is endangered by road alterations, pavement obstacles and busy road crossings (pages 4 and 10 of the file). Before the medical appeal tribunal, the claimant's representative stated that the claimant's son experienced difficulties when he was in traffic and that he walks with a sway; and the claimant stated that her son's balance was affected (page 29 of the file).

6. The examining medical officer stated (page 7 of the file) that the claimant's son managed to walk 200 yards but in 3/4 minutes and that he walked without a break and managed quite well with his stick. The medical board found that her son's speech was high pitched and difficult to understand (page 14 of the file) - a matter which would clearly be of some significance if the son was out of doors alone and lost his way. In their assessment of his walking ability, the medical board stated:

"He can walk well, under supervision, with usual risks for partially-sighted person. He is observed to walk more than 100 yards today."

7. In their findings and reason for decision, the medical appeal tribunal stated:

"We saw [the son] walk today for about fifty yards and his mobility was commensurate with his severe defect in vision. He could have obviously walked further in a similar manner. He was not ataxic. We did not find that his lack of hearing added significantly to any disability in his walking."

8. The claimant's ground of appeal is set out in her application to the Commissioner for leave to appeal, namely:

"...as stated previously, the 'corridor' test for mobility, in no way tests a person who is deaf-blind in a fair manner. We have requested an outdoor test in unfamiliar city centre conditions which present the usual conglomeration of unexpected hazards with which a deaf-blind person appears to be expected to cope."

9. The Chief Commissioner, in decision on Commissioner's file CM/103/1984, stated at paragraph 4:

"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."

* That decision has not been understood to mean that there must in law be an out of doors test to assess ability to walk out of doors. That ability can be assessed by inference from performance in an indoors test, but such inference has to be reflected in the decision of the tribunal with proper and adequate reasons to support the inference. It is true that the claimant in that case suffered from left hemiplegia - a different disability from that of the claimant's son in the present case. Nevertheless, in my judgment, the words of the Chief Commissioner are of general application, and should be applied in the present case.

10. The Secretary of State's representative in her submission on appeal to the Commissioner, at paragraph 5, has submitted that

"...it is clear that the tribunal had in mind outdoor walking ability in finding that [the son] walked fifty yards and could have 'obviously walked further in a similar manner' since such distances are far beyond those normally required indoors."

In my judgment, it is not sufficient for the tribunal to have had outdoor walking ability "in mind"; they must make the necessary findings of fact. The essence of the medical appeal

tribunal's decision was that "his mobility was commensurate with his severe defect in vision". They have given no indication as to what they meant by "commensurate". It would appear from the claimant's ground of appeal that there was no out of doors walking test, and even if that was not required in law, the tribunal have not made any findings specifically with regard to the capacity of the son to walk out of doors "notwithstanding that that was the statutory criterion", to quote the words of the Chief Commissioner in the case cited above. In that case the Chief Commissioner had stated, at paragraph 4, that 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 evidence of the claimant in the present case is to a similar effect in relation to her son. In my judgment, the failure of the medical appeal tribunal to make any findings, inferential or otherwise, with regard to the capacity of the claimant's son to walk out of doors constituted an error of law and the case must be reheard and redetermined by a differently constituted tribunal. X

11. I appreciate that in Lees v Secretary of State for Social Services (1985) A.C 930 the House of Lords have made it clear that regulation 3(1)(b) of the regulations relates to physical limitations upon the ability to move on foot and not to the direction of that movement. In that case, according to the head note, the claimant was completely blind and also suffered from some hydrocephalus with symptoms including impairment of balance and impairment of capacity for spatial orientation; and outdoor walking was only possible with the help of an adult guide to pilot her and it had proved impossible to substitute a guide dog to assist her. In his speech Lord Scarman, at page 935, stated:

"[Counsel] would have us construe the ability 'to make progress on foot' as an ability to advance from point A to a desired destination B. The context does not admit of such a meaning. The words clearly refer to the physical ability to move on foot, not to the direction of that movement."

Lord Scarman, further, stated at page 936:

"The allowance is, [counsel] submits, available for those who cannot walk out of doors unaided. A person who lacks the ability to direct his walking is, therefore, eligible: he can walk only with the aid of a guide. I reject the submission for two reasons."

Lord Scarman stated that the first reason was the language of the sub-paragraph which indicated to his mind that the disability which had to be shown to exist was in the physical movement on foot. The second reason was that, although blind people cannot walk out of doors unaided, the physical act of walking was as much within their ability as within that of a sighted person. "If [said Lord Scarman at page 936] unaided walking ability is the test, it inevitably means that no blind person can walk: which is absurd...a blind person by reason of his blindness may need a guide; but he does not, merely because he is blind, need enhanced facilities for locomotion. He is as mobile as a sighted person: his disability is that he cannot see where he is going."

12. In Lees, therefore, the House of Lords was dealing with spatial orientation - the ability to walk from point A to a desired point B. The Chief Commissioner in CM/103/1984 referred to Lees; and although his reference to "having to contend with pavements" (to which I have referred in paragraph 10 above) was in connection, of course, with a claimant suffering from left hemiplegia not blindness (as in the present case), that reference raises an interesting point. For the House of Lords did not deal with the danger or risk of danger to a blind person of unseen obstacles causing the blind person to fall and hurt himself. I must leave it to the new tribunal to decide, if it arises, whether, in such circumstances, a blind claimant's ability to walk is so limited "as regards ... the manner in which he can make progress without severe discomfort" that he is virtually unable to walk - a point which does not appear to have been argued in Lees. X

13. Having heard all the evidence, the new tribunal must enquire into and make findings of fact and reach a decision with their reasons as to whether or not the claimant's son's 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.

14. For those reasons I allow this appeal.

(Signed) A T Hoolahan
Commissioner

Date: 16 March 1987