Mobility allowance - physical condition (appealed to Ct of Appeal)

JGM/JCG

Commissioner's File: CM/136/1984

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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 SECURITY COMMISSIONER

Name: Tony Joseph Harrison

Medical Appeal Tribunal: Nottingham

Original Devision Case No: 52/1/84

1. My decision is that the decision of the medical appeal tribunal dated 9 April 1984 was not erroneous in point of law.

2. The claimant is a man who was injured in an industrial accident in 1979, when he fell from a crane and injured his back severely. He is in receipt of various forms of social security benefit; but on this appeal I am concerned solely with his claim for mobility allowance. On his initial claim to mobility allowance a medical appeal tribunal found the claimant's physical condition as a whole to be such that he was virtually unable to walk and that this virtual inability was likely to last until 24 June 1983 and mobility allowance was awarded to him down to that date accordingly. The claimant made a renewal claim on which a medical practitioner expressed the opinion the claimant's physical condition as a whole was such that he was virtually unable to walk and that this inability was likely to continue for five years. But the matter was referred to a medical board who gave a decision dated 22 September 1983 to the contrary of this, holding that his physical condition as a whole was not such that he was either unable or virtually unable to walk. This decision was confirmed on appeal by the medical appeal tribunal. The material part of the reasons for their decision read as follows:-

> "We find that the restriction in the claimant's ability to walk is not due to a physical cause but is hysterical in origin. We come to this conclusion having considered all the scheduled evidence and what we have heard and seen today, and accordingly the claimant does not satisfy the requirements of the Mobility Allowance Regulations 1975 as amended and the appeal therefore fails."

3. Under section 37A(1) of the Social Security Act 1975 it is a condition of title to mobility allowance that the person concerned should be suffering from physical disablement such that he is either unable to walk or virtually unable to do so; and subsection (2) of that section authorises the making of regulations in effect defining the circumstances in which this condition may be treated as satisfied. Regulation 3(1) of the Mobility Allowance Regulations 1975 as amended by the Mobility Allowance Regulations 1979 provides so far as material as follows:-

> "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 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 -
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> (a) he is unable to walk; or
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> (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
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> (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."

4. The basic ground on which the medical appeal tribunal gave their decision did not depend on the details of sub-paragraphs (a) (b) and (c) above but on the finding that the limitations on the claimant's capacity to walk were not attributable to the state of the claimant's physical condition as a whole, but to hysteria, which they did not consider to be a manifestation of his physical condition as a whole. On behalf of the claimant it is urged that there was an error of law that led to this conclusion. A report from a consultant in forensic psychiatry which was not before the tribunal has been produced, in which the opinion is expressed that it is not the result of hysteria that the claimant is unable to walk, but that it is the result of pain; and this has been supplemented by a letter agreeing with it written by the claimant's own doctor. The claimant's advisers recognise, I think, that the decision of the medical appeal tribunal cannot be held to be erroneous in point of law on account of their having paid no attention to medical evidence or opinions that were not before them; and they submit accordingly in substance that they ought not to have ventured to reach a conclusion on a difficult matter like hysteria without calling for psychiatric evidence. It is also submitted that even if the claimant's condition is hysterically based this is still a manifestation of his physical condition as a whole.

5. I reject both these submissions. A medical appeal tribunal's medical members have their own expertise and it is in my judgement entirely for them to decide whether or not that

expertise is sufficient when taken in conjunction with the evidence adduced to them by the claimant and the Secretary of State for Social Services to enable them to decide the medical question before them. They were entitled to take the view that they had sufficient evidence before them. I may add that if they had had the consultant's report before them they would not have been bound to agree with it, but could have given their reasons for disagreeing with it if they did disagree.

6. As for the second point, title to mobility allowance under section 37A and regulation 3(1) depends on a claimant's physical condition; this may be contrasted with, say, the attendance allowance which, under section 36 of the Act, may be awarded in respect of either physical or mental disablement. It may be that in the last analysis all mental disablement can be ascribed to physical causes. But, if so, it is obvious that the Act on drawing the distinction between physical and mental disablement did not mean this last analysis to be resorted to. In the case of the subject of Decision R(M)2/78 a medical appeal tribunal were concerned with a claimant who suffered from Down's syndrome, sometimes called mongolism. The effect of the condition on that particular claimant was that he often refused to walk. The medical appeal tribunal decided that the nature of Down's syndrome was such that it was a form of physical disablement and held that the claimant satisfied the medical conditions for an award of mobility allowance. The Secretary of State appealed but the Commissioner held that it was for the medical appeal tribunal to determine what was a physical, and what was not a physical, cause of inability to walk and that their decision could not be disturbed. A converse case where a medical appeal tribunal decided that agoraphobia was not a physical condition occured in Decision R(M)1/80 and again it was held that the medical appeal tribunal decision could not be disturbed. I do not see how I can reach a different conclusion in relation to hysteria. This does not mean that in every case of hysteria the medical authorities are bound to hold that a claimant's hysteria is not a manifestation of his physical condition as a whole; but it does mean that if they do so find it will be impossible to disturb their decision on the ground that they ought to have found it to be a manifestation of the claimant's physical condition.

7. The appeal fails.

(Signed) J.G. Monroe
Commissioner

Date: 26 April 1985