

SOCIAL SECURITY ACTS 1975 TO 1986  
CLAIM FOR MOBILITY ALLOWANCE  
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Tony Nunn

Appeal Tribunal: Cambridge

Case No: 87/77

1. My decision is that the decision of the medical appeal tribunal ("MAT") given on 7 April 1987 is erroneous in point of law. Accordingly I remit the matter pursuant to regulation 36 of the Social Security (Adjudication) Regulations 1986.

2. The claimant appeals to and with leave of the Commissioner against the decision of the MAT, confirming the decision of the medical board dated 12 March 1986 that he was neither unable nor virtually unable to walk and that the exertion required to walk would neither constitute a danger to his life nor be likely to lead to a serious deterioration in his health and, consequently, that he was not entitled to mobility allowance - which he had claimed on 2 December 1985.

3. The claimant had been injured in a road traffic accident in 1976 and had suffered a stroke in 1983 which affected his left side and, in particular his left leg. The findings of the Board on 12 March 1986 in fact confirmed those of a single medical practitioner who had examined the claimant on 20 December 1985. So far as the MAT hearing is concerned I have been greatly assisted by a submission dated 5 August 1988 on behalf of the Secretary of State for Social Services which, inter alia, draws my attention to the claimant's evidence to the Board that -

"There is a slow improvement in the condition of my leg",

and that he had at that time estimated that he could "walk about half a mile without resting".

4. On appeal to the MAT the claimant's representative submitted by letter dated 19 September 1986 that the claimant "was over-estimating his abilities" in that respect. The MAT, however, did not make (or, if they made, failed to record) any specific findings as to his walking ability as at the date of the claim, which is, of course, the material time; see section 37A(2)(a) which, prior to amendment by the Social Security Act 1986, provided that a claimant qualified for mobility allowance only if -

"(a) his inability or virtual inability to walk is likely to persist for at least 12 months from the time when a claim for the allowance is received by the Secretary of State; and

(b) during most of that period his condition will be such as permits him from time to time to benefit from enhanced facilities for locomotion."

(The section has now been amended so that paragraph (a) provides that the inability or virtual inability to walk must be likely to persist for at least 12 months from "the relevant

date", which is defined as the date on which either such inability or virtual inability commenced or the date on which the claim was received, whichever is the later; but those considerations have no relevance to the instant case).

5. While I agree with the Secretary of State's representative's submission that, to put it bluntly, there is little or no substance in the grounds put forward by the claimant in his application for leave to appeal (which stood as his grounds of appeal), I accept that the MAT's failure to deal with the matter set out in the preceding paragraph does constitute an error of law. On that basis alone I set their decision aside.

6. There is, however, one allegation made by the claimant which I must refer to. That is his complaint that his representative, Mrs Judd (who is an occupational therapist with the Cambridgeshire Social Services Department) was not allowed by the chairman to address the MAT on his behalf. The circumstantial detail provided by the claimant was such that I considered it necessary to seek the comments of the chairman and the medical members, and the appropriate enquiries were instituted. The medical members have no recollection of the case and are unable to comment and the chairman, who also has no independent recollection of the matter, is emphatic that he has "never (repeat never) refused a representative right of audience or speech".

7. In fact a letter dated 22 February 1989 from Mrs Judd makes it plain that she was not refused the right to speak although, as I understand it, she was told - rightly in my view - not to interrupt to "emphasise a point" while the claimant was giving evidence. She says that thereafter she "felt unable to speak too often" for fear of jeopardising the claimant's "chances of a fair hearing". That presents a picture very different to that put forward previously, and I am entirely satisfied that the hearing was properly conducted and that Mrs Judd had the opportunity to say all that she wished, albeit at the appropriate time and in a proper manner.

8. The regrettable result of what I consider to be these misconceived allegations by the claimant has been to delay this decision by some six months while enquiries were made and comments obtained from all interested parties. Complaints of impropriety in the conduct of hearings are serious and must be taken seriously; it is right that they should be thoroughly investigated. However, having said that, claimants and their representatives would be well advised to consider carefully and responsibly whether the facts and the evidence justify such allegations being made and pursued.

9. The claimant's appeal is allowed.

(Signed) M H Johnson  
Commissioner

Date: 21 April 1989