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Commissioner's File: CM/216/1988

Region: North Eastern

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

?

1. My decision is that the decision of a medical appeal tribunal (MAT) dated 4 September 1987 is erroneous in point of law, in so far as the reasons for the decision are insufficiently stated to satisfy the requirements of regulation 31(4) of the Social Security (Adjudication) Regulations 1986.

2. The claimant is now aged 36. In 1981 he injured his right knee and leg in a pit accident. In 1985 he received multiple injuries as a result of being physically attacked. He has difficulty with walking. On 29 October 1986 the Secretary of State received a renewal claim from the claimant to continue an existing award which expired on 29 November 1986. The history of that claim is set out in the written submission made on behalf of the Secretary of State dated 13 October 1988 and I see no merit in my repeating such history here. Suffice it to say that the MAT in concluding that the claimant did not satisfy the conditions for an award of mobility allowance stated in their reasons that they had read the scheduled evidence and noted the claimant's submission; they had read and accepted the consultant orthopaedic surgeon's report of 16 June 1987; they saw the claimant walk about 75 yards most of which at a slow pace; he stopped 5 or 6 times; he walked with a limp; he complained of pain in right leg; there was no evidence of distress; he underestimated considerably his walking ability; he should have no problems walking equally well out-of-doors; in their opinion he was not suffering from any physical disability such as would preclude him from walking without difficulty; he did not fulfil any of regulations 3(1)(a), (b) or (c). The claimant contends that the MAT erred in point of law and seeks to have their decision set aside.

3. The claimant does not contend that he is unable to walk in terms of regulation 3(1)(a) of the Mobility Allowance Regulations 1975, as amended ("the Regulations"). Regulation 3(1)(b) clearly imports that a person may be found to be virtually incapable of walking if he is limited in one or more of the various ways mentioned in that regulation in making progress on foot without severe discomfort. Accordingly it was incumbent on the MAT to record findings of fact on each of the factual tests in regulation 3(1)(b). Although the MAT recorded that the claimant walked at a small pace there is nothing to indicate the time taken to cover 75 yards. Further, no reasons are given for the claimant "stopping 5 or 6 times". They recorded that "he complained of pain in his right leg". Was this the reason for stopping? The MAT concluded that there was no evidence of distress. These findings appear somewhat incompatible. Clearly they repudiated any contention that the claimant

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was, whilst walking, suffering severe discomfort. It would perhaps have been more helpful if the MAT had used the words of the relevant statutory provision - "without severe discomfort - in my view the decision was insufficiently stated to satisfy the requirements of regulation 31(4) of the Adjudication Regulations. The claimant was left in the dark as to why his claim had been rejected.

4. The claimant complains that the walking tests were performed indoors whereas regulation 3(1)(b) referred to the ability to walk out-of-doors. In my view this does not mean that the claimant's ability to walk must be tested out-of-doors. Manifestly in the present case the members of the MAT were able to reach a conclusion on the claimant's ability to walk by watching him indoors. They related all the information, including all medical evidence, which they had in assessing his ability to walk out-of-doors. The MAT's decision makes it clear that they had regard to the position out-of-doors. The MAT were entitled to reach such a conclusion.

5. The claimant also complains that the MAT did not record the fact that he used a walking stick when walking. I do not consider this an error in point of law. Regulation 3(2) provides that entitlement to mobility allowance is based on the limitations of the person's ability to walk using any appropriate prosthesis or artificial aid "which he habitually wears or uses". The tribunal accepted the said orthopaedic surgeon's report in which he noted that the claimant used "the stick in his right hand". Although it would perhaps have been more helpful if the MAT had specifically referred to it, I do not consider the admission constituted an error in point of law.

6. Entitlement to mobility allowance is based on physical disablement. As a result the MAT were required to consider the claimant's physical disability in determining whether or not he satisfied the relevant provisions for an award. In his written submission the Secretary of State submits (paragraph 7) that "in the light of [the consultant orthopaedic surgeon's] report, accepted by the MAT, and the findings and reasons for decision, it is submitted that it is clear that the MAT did not accept that the claimant's walking ability restrictions are physical in origin." I do not accept this interpretation of the reasons for decision. The consultant orthopaedic surgeon concluded that he did not think that the claimant had any "significant organic pathology". The MAT rightly, in my view, confined their decision to the claimant's physical disablement and concluded that "he is not suffering from any physical disability such as would preclude him from walking without difficulty." The tribunal disregarded the claimant's inability to walk through deficiencies which were psychogenic in origin, however in my view they failed to explain with clarity what disability to walk was ascribed to physical disability.

7. Regulation 3(1)(c) of the Regulations provides that a person may be found to be virtually incapable of walking if "the exertion required to walk would constitute a danger to his health or would be likely to lead to a serious deterioration in his health". Although the tribunal concluded that the claimant did not satisfy these conditions, they gave no reasons for so doing. There is nothing to indicate that adequate consideration was given to this consideration. The decision was erroneous on this ground also.

8. I can appreciate that the claimant considered it unfair that whereas he received mobility allowance, he now receives nothing although he considers his condition warrants it. In Decision CM/205/88 a Tribunal of Commissioners held that a medical appeal tribunal must give reasons for not "renewing" mobility allowance on the expiry of a previous award. In the present case no reference was made to the previous award and there is nothing to indicate that the MAT took account of the claimant's medical history as a whole.

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9. For the reasons stated above the claimant's appeal is allowed and I give the decision set out in paragraph 1.

(Signed) R.F.M. Heggs
Commissioner

Date: 10 October 1989