

CPAC

MJG/SH/7



Commissioner's File: CM/347/1990

**SOCIAL SECURITY ACTS 1975 TO 1990**  
**CLAIM FOR MOBILITY ALLOWANCE**  
**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. I allow the claimant's appeal against the decision of the medical appeal tribunal dated 18 April 1989 (relating to mobility allowance) as that decision is erroneous in law and I set it aside. I remit the case to the adjudication officer. Social Security Act 1975, section 112; Social Security (Introduction of Disability Living Allowance) Regulations 1991, S.I. 1991 No.2891.

2. This is an appeal to the Commissioner by the claimant a woman born on 24 March 1936. The appeal is against the decision of a medical appeal tribunal dated 18 April 1989 which dismissed the claimant's appeal from a decision of a medical board dated 17 November 1987, to the effect that the claimant did not satisfy the medical conditions for an award of mobility allowance (see section 37A of the Social Security Act 1975 and regulation 3 of the Mobility Allowance Regulations 1975). It appears, from letters from the claimant dated 7 June 1989 and 12 August 1991, that the claimant may wish also to appeal to the Commissioner against a decision of the medical appeal tribunal given on the same day relating to Severe Disablement Allowance. However no leave to appeal has been given in relation to that decision of the medical appeal tribunal, nor has it been the subject of any submission on behalf of the Secretary of State. If the claimant indeed wishes to pursue an appeal against the medical appeal tribunal's decision relating to Severe Disablement Allowance she should write to the Office of Social Security Commissioners indicating that this is so and ask for her letter to be drawn to my attention.

3. When I granted on 8 October 1990 leave to appeal to the claimant against the decision of the medical appeal tribunal

relating to mobility allowance, I added an observation to the grant of leave as follows,

"On the claimant's 'sex discrimination' point, comparison may be made with para. 1(8) of Schedule 10 to the Social Security Act 1975.

That was because the claimant's ground of appeal against the medical appeal tribunal's decision was as follows, "Sex discrimination due to panel consisting of all men. Failure by panel to assess me as doubly incontinent and slowness of walk relates to this problem".

4. On this point, the Secretary of State in a written submission dated 26 February 1991 submits as follows (paragraphs 4 and 9),

"The claimant contends in her grounds of appeal to the Commissioner .. that she was sexually discriminated against as the MAT consisted of all men. The Secretary of State's representative submits that para 1(8) of Schedule 10 of the Social Security Act 1975 states that 'if practicable, at least one of the members of the tribunal hearing a case shall be of the same sex as the claimant'. Regrettably, this was not the case at his hearing but the Secretary of State's representative submits that this does not constitute an error of law and there is no evidence to suggest that the MAT were not impartial in their deliberations and that regulation 33(1) of the Social Security Adjudication Regulations 1986 was not satisfied ... in the light of the claimant's ground of appeal and the nature of her medical complaint, the Secretary of State's representative submits that in the event of a re-hearing of this case the differently constituted MAT should include at least one female member if at all possible."

I must say at once that this submission is misconceived and erroneous. I drew attention to the provision of paragraph 1(8) of Schedule 10 to the 1975 Act, as I stated in my grant of leave to appeal, by way of comparison. In fact that provision applies only to social security appeal tribunals and does not apply to medical appeal tribunals.

5. However, I have considered this matter generally. The provisions as to the composition of medical appeal tribunals are to be found in Schedule 12 to the Social Security Act 1975 and regulations 31 and 33 of the Social Security (Adjudication) Regulations 1986. There is in those legislative provisions no corresponding requirement that one member of the medical appeal tribunal shall be of the same sex as the claimant. Doubtless this omission was deliberate and would probably arise from the very different nature of problems that a medical appeal tribunal has to investigate, from those adjudicated on by a social security appeal tribunal. Moreover, the members of a medical appeal tribunal consist of two medical practitioners and a legally qualified chairman. It might well be inappropriate and

difficult administratively for such a body necessarily to have upon it a member of the same sex as the claimant. I therefore hold that the claimant's ground of appeal fails.

6. So far as any new body dealing with this case is concerned, it will not now be a medical appeal tribunal because I have remitted the matter back to an adjudication officer. That is because, as from 3 February 1992, section 112(6) of the Social Security Act has been thus amended by regulation 24(13) of the above-cited (Introduction of Disability Living Allowance Regulations 1991. In this connection, it is interesting to note that paragraph 13 of the new Schedule 10A to the Social Security Act 1975 (relating to the new Disability Appeal Tribunals and inserted by Schedule 1 to the Disability Living and Working Allowance Act 1991, c.21) provides that, if practicable at least one of the members [of the Disability Appeal Tribunal] shall be of the same sex as the claimant." That will bring into consideration the rulings in R(SB) 2/88 as to the similar requirement for social security appeal tribunals (see above).

7. I have however set the medical appeal tribunal's decision aside because I accept other grounds on which the appeal is supported and put forward in paragraphs 5 and 8 of the written submission dated 26 February 1991 on behalf of the Secretary of State reading as follows,

"The claimant further contends that her walking is limited in point of speed due to incontinence and that the MAT have failed to assess this. Although the MAT have clearly taken considerable care with this case it is submitted that regulation 3(1)(b) [of the Mobility Allowance Regulations 1975] clearly imports that a person may be found to be virtually incapable of walking if she is limited in one or more of the various ways mentioned in that regulation in making progress on foot without severe discomfort. Accordingly it is incumbent on the MAT to record findings of fact on each of the factual tests in regulation 3(1)(b) and it is submitted that the MAT have failed to record sufficient findings on this issue, notwithstanding any findings recorded in the chairman's notes of evidence which do not form part of the decision .. it is submitted in conclusion that the MAT are carrying out a judicial function and have the duty to evaluate all the relevant evidence and to provide a statement of their reasons for decision. It is submitted that the minimum requirement must at least be that the claimant should be able to discern on the fact of the decision the reasons why the evidence has failed to satisfy the MAT. The MAT in this case have not provided adequate findings to enable the claimant to see how they reached their conclusion and it is further submitted that the MAT appear to have based their findings merely on their observations of the claimant's walking ability at the hearing and have not addressed their minds to the claimant's overall walking ability as they were required to do."

8. When I look at the medical appeal tribunal's record of

decision (on form MY365) I see that the only reasons and findings given by the medical appeal tribunal are,

"The claimant undertook a walking test out of doors. She walked a distance of over a 100 yards at quite a brisk pace unaided, but with a slight limp and with no evidence of distress. In our view, the Medical Board's decision of 17 November 1987 was correct and we confirm the same."

There is also a reference to the decision as to Severe Disablement Allowance and the note there of the detailed medical examination in connection with that matter. Although it is clear to me that the medical appeal tribunal took considerable care with this case I accept the Secretary of State's submission, in relation to the rather brief reasons for decision given by the medical appeal tribunal, as correct in this case. Accordingly I have set the medical appeal tribunal's decision aside.

9. The Secretary of State's representative in the submission of 26 February 1991 also refers to the omission by the medical appeal tribunal to deal with the fact that this was a renewal claim for mobility allowance and cites an unreported decision of a Tribunal of Commissioners on file CM/205/1988. However I will not deal with that particular matter here as it is unnecessary in view of the earlier parts of my decision and moreover I understand that this particular point may be the subject of consideration in the near future by the Court of Appeal. I therefore prefer to leave that particular point open.

(Signed) M J Goodman  
Commissioner

(Date) 7 February 1992