DECISION OF THE COMMISSIONER

1. This is an appeal, brought by the claimant with the leave of the tribunal chairman, against the decision of the Wigan disability appeal tribunal dated 4 September 1997 whereby they held that he was not entitled to either component of disability living allowance following a claim made on 19 March 1996. The claimant seeks an award of only the mobility component.

2. He advances three grounds of appeal:-

> "The tribunal accepted that based on the evidence available I can walk no more than 25 metres with a limp before having to stop because of the onset of severe discomfort. I submit therefore that my ability to walk is *not* appreciable or significant. (CDLA/608/94).
>
> The tribunal found that it would take me 5 to 6 minutes to cover 100 yards. I submit that this is so slow as to be arguably paramount to virtually unable to walk. (CM/145/1988 and CDLA/7427/1995).
>
> I submit that I am virtually unable to walk by virtue of regulation 12(1)(a)(ii) Disability Living Allowance regulations. My stated level of disability was supported by the medical evidence available to the tribunal and indeed they accepted this. I submit therefore that the tribunal made a decision supported by no, or insufficient, evidence."

The third ground seems to me to be no more than another way of putting the first two.

3. The tribunal recorded the following findings of fact in paragraphs 2 and 4 of their decision:-

> "2. Because of his physical disabilities [the claimant's] walking is limited to about 25 metres before having to stop for about 1 minute to rest due to pain in his left leg. After one minute he is able to continue for a further 25 metres or so before stopping. In total he can walk a distance of about 100 metres with rests about one minute every 25 metres. He walks with a limp on his left side and with the aid of a left elbow crutch. It would take him in total about 5 or 6 minutes walk 100 yards."
>
> "4. [The claimant's] walking ability as at today is similar to that of the date of claim (19 03 96)."

4. In CDLA/608/94, upon which the claimant relies, it was said:-

> "14. It is impossible to lay down a priori rules for such questions as the distance a person must be found to walk without severe discomfort before he ceased to count as 'virtually unable' to walk, since so much depends on the physical state of each

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particular claimant. However it has been said that what 'virtually unable to walk' means is a question of law (R(M)1/78 para 11), and some general guidance can be gleaned from the reported decisions. In the absence of any special indications from the other three factors, if a claimant is unable to cover more than 25 or 30 yards without suffering severe discomfort, his ability to walk is not 'appreciable' or 'significant'; while if the distance is more than 80 or 100 yards, he is unlikely to count as 'virtually unable to walk' as those words have generally been interpreted in section 73 [of the Social Security Contributions & Benefits Act 1992] and reg 12 [of the Social Security (Disability Living Allowance) Regulations 1991]."

I entirely accept that if a person cannot walk more than 25 yards at all then he is to be regarded as virtually unable to walk but, where a person can walk 25 yards, is then obliged to stop to avoid severe discomfort, but can then, after a short pause, walk another 25 yards and so on, it seems to me that one must look at the overall distance that can be walked, taking account of the fact that the claimant must stop when considering the speed at which, and the manner in which, he walks. I therefore reject the claimant's first ground of appeal.

4. The problem with the claimant's second ground of appeal as drafted is that a tribunal cannot be said to have erred in law merely because the claimant's ability to walk was *arguably* paramount to being virtually unable to walk and the Commissioner in CM/145/88 (followed in CDLA/7427/95) went no further than that. She said:-

"Regulation 3(1)(b) of the Mobility Allowance Regulations 1975, as amended, clearly imports that a person may be found to be virtually incapable of walking if his ability to walk out of doors 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). The tribunal recorded that the claimant walked 90 yards 'very slowly'. He told them he could walk only 'about 5 minutes'. Assuming it took the claimant 5 minutes to walk 90 yards, it would take him much more than 1½ hours to walk a mile - about 4½ times as long as a normal person, assuming, of course, the claimant could keep up the pace. In my view this is so slow as to be arguably paramount to virtually unable to walk. The MAT gave no explanation as to why they did not consider it to be sufficiently slow to satisfy the medical conditions for an award of mobility allowance."

In that case, the tribunal do not appear to have made any finding as to the amount of time it in fact took the claimant to walk the 90 yards they saw him walk and the Commissioner allowed the appeal on the ground of inadequacy of reasons, rather than on the ground that the decision was one that no tribunal, properly instructed as to the law, could reasonably have reached. In the present case, the tribunal did make findings of fact on all the relevant factors and, in paragraph 5 of their decision (which I need not set out here) they gave clear reasons for those findings. Their decision cannot be criticised on the ground of inadequacy of reasons.

5. An appeal to a Commissioner lies only on a point of law. I accept that, ultimately, the question whether facts found by a tribunal are capable of supporting a conclusion that a claimant is not virtually unable to walk is a question of law and that an error of law will be shown if, on the facts they have found, a tribunal have reached a conclusion that is wholly

unreasonable. However. it is not for a Commissioner to attempt to lay down a precise formula for determining whether or not a claimant is unable to walk when the legislation does not do so. The legislation allows adjudication officers and tribunals a margin of appreciation. It is possible that not every tribunal would have reached the conclusion that someone with the present claimant's limited walking ability was not virtually unable to walk. I do not consider that a tribunal concluding that the claimant was virtually unable to walk would have erred in law but, equally, I can detect no error of law in the present tribunal's decision. The question whether the claimant was virtually unable to walk was a matter for the judgement of the tribunal and, this being something of a borderline case, they were entitled to decide it either way provided they had regard to the relevant factors.

6. The adjudication officer supports the claimant's appeal on the ground that the tribunal's reasoning was inadequate, which I do not accept for the reasons I have given. He also supports the appeal on the ground that the tribunal failed to consider the claimant's entitlement to the care component of disability living allowance. As the claimant's representative conceded before the tribunal that the claimant was not entitled to the care component and as that concession was not manifestly erroneous even though there was some slight evidence in the claimant's favour, I reject that part of the adjudication officer's submission as well.

7. Accordingly, I must dismiss the claimant's appeal.

M. ROWLAND
Commissioner
8 April 1999