

SOCIAL SECURITY ACTS 1975 TO 1986

APPEAL FROM DECISION OF MEDICAL APPEAL TRIBUNAL ON A QUESTION OF LAW DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the medical appeal tribunal dated 12 March 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, now aged 58, has difficulty with walking. On 27 August 1985 the Secretary of State received a claim for mobility allowance from the claimant on form MY 1. The history of the claim is set out in the written submission made on behalf of the Secretary of State dated 3 October 1988 and I see no merit in my repeating it here. Suffice to say that the claimant contends that the tribunal erred in point of law and seeks to have their decision set aside.

3. 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 she is limited in one or more of the various ways mentioned in that regulation in making progress on foot without severe discomfort. The tribunal recorded findings and reasons on each of the tests mentioned in regulation 3 (1) (b) which they considered the claimant failed to satisfy. The claimant stated at her walking test that she had weakness in both legs and pain down the back of her legs. The medical appeal tribunal failed to say whether or not they believed her but merely recorded that she did not give the appearance of being in severe discomfort. This in my view is not sufficient since pain can be borne in stoic silence. If a medical appeal tribunal believed that she was feeling physical pain in the legs they should have gone on to decide if it actually amounted to severe discomfort and also whether it arose from her physical condition as a whole or from something other than her physical condition i.e. a psychological condition. Unless the medical appeal tribunal did not believe that the claimant had pain in both legs or ascribed it to psychological causes, they had no basis for concluding that they could find no evidence of a physical condition which would significantly affect her ability to walk, since merely having pain and weakness in the legs could have this effect.

4 The claimant also complained of dizziness whilst walking. In my view this could amount to "severe discomfort" depending on the frequency and severity of the dizziness. In my view the medical appeal tribunal failed to consider this aspect of the case adequately. The medical appeal tribunal recorded that the claimant was observed "to walk round with the aid of a stick and with some support". However they failed to indicate the extent to which such support was necessary to enable the claimant to make progress on foot and whether it could be provided by a suitable artificial aid. As a result there are insufficient clear and adequate reasons for the decision. I should

put on record that the Secretary of State's representative supports the appeal on this ground. The claimant also complains that she was "dragged ... along the path" by one of the medical members of the medical appeal tribunal. There is insufficient evidence before me to comment on this issue and in view of my decision I do not propose to pursue the matter further.

5 For completeness I should add that the tribunal had regard to regulation 3 (1) (c) of the Mobility Allowance Regulations 1975, as amended which provides that a person may be found to be virtually incapable of walking if the exertion required to walk would constitute a danger to her life or would be likely to lead to a serious deterioration in her health. The medical appeal tribunal found that the claimant did not satisfy these conditions for an award. In my view they did not err in law on this ground.

6. For the reasons stated above, the decision of the medical appeal tribunal was erroneous in point of law. The claimant's appeal is allowed and I give the decision set out in paragraph 1. The matter must be referred to a fresh tribunal, which in accordance with normal practice should be differently constituted from that which gave the decision dated 12 March 1987.

(Signed) R.F.M. Higgs

Commissioner

Date: 11 August 1989