

DGR/SH/13

Commissioner's File: CM/005/1990

SOCIAL SECURITY ACTS 1975 TO 1990

CLAIM FOR MOBILITY ALLOWANCE

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. For the reasons set out below, the decision of the medical appeal tribunal ("MAT") given on 26 June 1989 is not erroneous in point of law, and accordingly this appeal fails.
2. On 26 June 1989 the MAT decided that the claimant was unable to satisfy the medical conditions for an award of mobility allowance as at the day immediately preceding his 65th birthday. The claimant contends that such decision was erroneous in point of law.
3. The tribunal gave as the reason for their decision the following:-

"We observed [the claimant] walking 40 yards indoors. He stopped once briefly with some breathlessness and was evidently breathless at the end. This was followed by an unproductive cough (in paroxysms). On examination he was breathless at rest and showed signs of nervousness with pounding heart but no intrinsic cardiac abnormality. Pulse regular, blood pressure 160/90. In the chest fine inspiratory crackles at both lung bases. No evidence of broncho spasm.

Rest of examination unremarkable. Peak flow estimations were poorly performed and therefore unrealistic. Best figure obtained was 220 litres per minute. We observed him walk 70 yards outside at a fair pace at the end of which he stopped for about 30 seconds during which time he was coughing continuously. He then waited another 30 seconds following which he could proceed. Today he would only just satisfy the criteria in reg 3(1)(b) of the Mobility Allowance Regs.

We were told by the claimant and his representative and we

accepted that there had been a progressive deterioration in his condition over the past two years so that his walking ability is basically less than it was two years ago. We therefore find that on 21.5.87 (the day before his 65th birthday) he was not unable to walk nor virtually unable to walk.

On 21.5.87 the claimant was able to walk and did not therefore qualify under regulation 3(1)(a).

Although the claimant's ability to walk was then limited and accompanied by a degree of discomfort, we are of the opinion, in the light of our own examination and observations, with full consideration of all the evidence before us, that the degree of limitation of the claimant's ability to walk out of doors, as regards distance, speed, manner and length of time taken, without severe discomfort was not such that he could be regarded as being virtually unable to walk and he does not therefore qualify under regulation 3(1)(b).

We are of the opinion that the exertion required to walk did not on 21.5.87 constitute a danger to his life, nor would it have been likely at that time, or since, to lead to a serious deterioration in his health and he did not therefore qualify under regulation 3(1)(c)."

I see nothing wrong with the tribunal's decision. They appear to me to have gone into the matter fully, and left the claimant in no doubt as to why they reached the conclusion they did.

4. Accordingly, it is somewhat surprising to find the Secretary of State supporting the appeal. His submissions are somewhat rambling and disconnected, but in the second sentence of paragraph 7 of his submissions dated 6 November 1990 a succinct and fully comprehensible contention is put forward:-

" 7. It is submitted that the MAT have not made it clear in their findings and reasons for decision [why] they consider the claimant did not satisfy the medical conditions prior to his 65th birthday and the Secretary of State's representative therefore supports this ground of appeal."

There is, of course nothing in this point. The tribunal made it perfectly clear that, although the claimant satisfied the conditions of regulation 3(1)(b) so that he was virtually unable to walk as at the date of examination, he only just did so. They went on to explain that the evidence from the claimant and his representative suggested a deteriorating condition, and from that they concluded, in exercise of their medical judgment, that, having regard to the claimant's condition at the date of examination, the claimant was unable to satisfy regulation 3(1)(b) approximately two years before on the day before his 65th birthday. I do not see how the tribunal could have made the position clearer.

5. The Secretary of State goes on to make a further point:-

" 8. It is further contended in the grounds of appeal that the MAT failed to give sufficient reasons why the claimant did not qualify under regulation 3(1)(c). The MAT recorded that in their opinion:-

'The exertion required to walk did not on 21 May 1987 constitute a danger to life, nor would it have been likely at that time, or since, to lead to a serious deterioration in his health and he did not therefore qualify under regulation 3(1)(c).'

It is submitted the MAT were entitled to reach such a conclusion which does not appear unreasonable in the face of the evidence. However it is submitted that their lack of actual findings on this question leaves interested parties guessing as to how they reached such a conclusion."

I also reject that submission.

6. I am not sure to what extent, if at all, it had ever been contended that the claimant could on the day before his 65th birthday bring himself within regulation 3(1)(c). But the MAT took no chances in the matter; they gave him a medical examination which covered his condition generally, and I note that they stated, inter alia:-

"No intrinsic cardiac abnormality. Pulse regular, blood pressure 160/80. In the chest fine inspiratory crackles at both lung bases. No evidence of broncho spasm. Rest of examination unremarkable."

The plain fact is that the tribunal, in the exercise of their expertise, were satisfied that on any footing the claimant did not bring himself within regulation 3(1)(c) on the day before his 65th birthday, and that was a matter entirely for them. Moreover, they were not required to justify their medical expertise, and explain the mental processes and medical experience which led them to their conclusion. (See in this connection CI/83/89.)

7. In short I see no respect in which it could be said that the tribunal erred in point of law, and I have no hesitation in dismissing this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 2 March 1992