Mobility Allowance — decisions of Cts & Commissioners — believe that the law has always been — therefore decision of MAT may be rendered deficient by later developments in case law.

MJG/SH/10/MD

X

Commissioner's File: CM/40/1985

DHSS File: B.51023/851

SOCIAL SECURITY ACTS 1975 TO 1985

APPEAL FROM DECISION OF MEDICAL APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Elsie Wigfall (Mrs) on behalf of Craig Robert Wigfall

Medical Appeal Tribunal: Leeds

Original Decision Case No: 19/10/85

Application for leave Case No: 224/08/84

1. I allow the appeal on behalf of the claimant against the decision of the medical appeal tribunal dated 11 October 1984 as that decision is erroneous in law and is set aside. The case must be reheard by a differently constituted medical appeal tribunal: Social Security Act 1975, section 112 and the Social Security (Adjudication) Regulations 1984, regulation 39.

2. This is an appeal to the Commissioner on behalf of the claimant, a young man born on 17 October 1967, who suffers from the disabilities of mental retardation and spasticity. The appeal is brought on his behalf by his mother and is from the decision of the medical appeal tribunal of 11 October 1984 in which that tribunal (on a reference to it by the Secretary of State) reversed the decision of a medical board dated 10 July 1984. The board had held that the claimant, though not unable to walk, was "virtually unable to walk" within the meaning of section 37A(1) of the Social Security Act 1975.

3. In so holding the medical appeal tribunal gave its reasons as follows,

> "All the scheduled evidence has been considered including [the claimant's representative] remarks and notes (handed in). [The claimant] attended today and his mother and his brother. We have taken into account the relevant Commissioner's decisions including RM1/83 to which we referred. We have also noted the medical reports of Mr S and Dr. R J (as scheduled). [The claimant] was tested and we saw him walk today. We saw [the claimant] walk briskly, steadily and confidently for a distance of at least 75 yards. He held the examiner's hand for most of the time but did not require cajoling or persuasion. He twice broke into a trot spontaneously. He climbed up and down two flights of stairs slowly with a stiff left leg but quite steadily and confidently. He finally walked about 30 ft to a designated place without supervision or guidance. We find that the degree of cajoling and supervision which may be needed when walking out-of-doors according to the oral evidence is NOT sufficient to render him virtually unable to walk (as defined). We find he fails to fulfil the requirements of the Mobility Allowance Regulations 1975 (as amended) in that he is NOT unable or virtually unable to walk (as defined). We also find that the exertion of walking does NOT constitute a danger to his life NOR would it be likely to lead to a serious deterioration in his health. The board's decision is NOT confirmed."

4. The Secretary of State's representative submits that there was no error of law

ntained in the tribunal's procedure or reasoning but in written submissions dated 18 June 1986 the claimant's representative puts forward some nine grounds of appeal. This is a difficult case and it is only after some consideration that I have decided that I must set the decision of the medical appeal tribunal aside on the ground of error of law. Since the medical appeal tribunal gave its decision on 11 October 1984, the law about this type of case has gone through several vicissitudes culminating in a decision of the House of Lords in the case of Lees v. Secretary of State for Social Services [1985] Appeal Cases page 930, followed by a decision of a Tribunal of Commissioners on Commissioner's file CM/173/1985 to be reported as R(M)3/86. There the Tribunal gave exhaustive guidance on the proper approach to be made to such cases after the Lees case and gave approval to reported Commissioner's decision R(M)2/78. The legal position as to decisions of the Courts or of the Commissioners is that, although they are only given at a certain date, they are taken to have declared what the law always has been in the circumstances. Although I appreciate the medical appeal tribunal in this case took considerable trouble with the case, I am not satisfied that their reasoning adequately reflects the law as it has now been declared to be, particularly in the decision of the Tribunal of Commissioners referred to above.

5. Consequently, I set aside their decision and in accordance with the normal practice the case must be reheard by a differently constituted medical appeal tribunal which must have regard in particular to the decision of the Tribunal of Commissioners in R(M)3/86 and to R(M)2/78. My having allowed the appeal in this case is no indication by me of any opinion on whether or not the claim for mobility allowance ought in substance to succeed. No doubt the claimant's representative will put to the new medical appeal tribunal the detailed arguments that have been put forward in written representations on the claimant's behalf dated 18 June 1986. In the circumstances it would be better if I made no comment thereon but left the matter entirely to the new medical appeal tribunal. Appeal to the Commissioner in this jurisdiction lies only on a question of law. On issues of fact, medical opinion, diagnosis etc the decision of the medical appeal tribunal is of course final.

(Signed) M.J. Goodman
Commissioner

Date: 17th September 1986