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RAS/1/LM

Commissioner's File: CM/098/91

SOCIAL SECURITY ACTS 1975 TO 1990

CLAIM FOR MOBILITY ALLOWANCE

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the medical appeal tribunal dated 28 March 1990 is erroneous in law and I accordingly allow this appeal. The case is now referred to an adjudication officer in accordance with section 112 of the Social Security Act 1975 as modified by regulation 24(13) of the Social Security (Introduction of Disability Living Allowance) Regulations 1991.

2. The claimant had been in receipt of a mobility allowance from 3 September 1979 to 2 September 1985. A further award was then made from 3 September 1985 to 22 November 2012. On 12 April 1989 a medical board decided that there were grounds to review the award and concluded that the claimant no longer qualified. He appealed to the tribunal. They took the view that the claimant's symptoms were due to what they referred to as cardiac neurosis and that he did not therefore satisfy the primary condition of physical disablement laid down in section 37A(1) of the Social Security Act 1975.

3. I agree with the Secretary of State's representative that the tribunal's decision is fundamentally flawed by the fact that they did not give attention to the question whether there were grounds to review the current award. Their decision is on that account alone erroneous in law. And, in any event, before coming to a conclusion that there was no physical disablement - which had it seems not previously been put in issue - the tribunal should have afforded the claimant the opportunity of dealing with that point.

4. As from 6 April 1991 mobility allowance is replaced by the so-called mobility component of the new Disability Living

Allowance. And in accordance with the provisions to which I have referred above, this case must now be referred, not to another medical appeal tribunal, but to an adjudication officer.

(Signed) R A Sanders
Commissioner

Date: 2 March 1992