

SOCIAL SECURITY ACTS 1975 TO 1986

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

Name: L Clifford (Mrs) on behalf of Thomas Clifford

Medical Appeal Tribunal: London North

Original Decision Case No: 87/119

1. My decision is that the decision of the medical appeal tribunal dated 13 April 1987 is erroneous in law. The case must be reconsidered by a differently constituted tribunal.

2. Thomas Clifford, now 10 years old, has been microcephalic since birth. He is hyper-active and, while he is perfectly mobile, he has behaviour problems which according to the medical and other evidence require that at least when he is out-of-doors he is kept under supervision and control. He has no sense of danger, is aggressive to other people and has to be restrained. In his doctor's opinion Thomas' abnormal behaviour is due to his primary condition of microcephaly.

3. The claim made on Thomas' behalf for a mobility allowance was turned down as was his appeal. The tribunal's findings of fact and the reasons they gave for their decision were -

"We have read the Scheduled Evidence. We have heard Mr and Mrs Clifford and Mrs Watson for the Secretary of State. We accept the basic disorder as described. The need for an escort per se is not a qualifying factor for the purposes of Regulation 3(1). During the oral proceedings Thomas behaved well and he was obedient, there were no tantrums or the like. He is hereafter referred to as the claimant. We accept the need for an escort.

We have observed the claimant walking out of doors for a distance of 160 yards or thereabouts in three minutes. He was escorted by his father but for most of the time it was not necessary to hold his hand. He has a spastic gait with a tendency to trip up. There were no refusals or tantrums. We conclude that when such do occur they are likely to be wilful. There was no severe discomfort.

Having so observed the claimant walking and in the light of the medical evidence we find that the claimants physical disablement (and taking into account his physical condition as a whole) is not such that his outdoor walking ability is so limited as regards the distance over which or the speed at which or the length of time for which or the manner in which he can make progress on foot without severe discomfort that it can be said that he is virtually unable to walk. The Board is upheld."

In passing, I observe that it is plain from the hand-written record that the last paragraph of those findings and reasons, except for the last sentence, had been written out before the case was heard. That seems to me to be an undesirable practice. It does not inspire confidence that each of the ingredients of the pre-recorded material has been carefully considered. The principal matter of complaint however lies in the crucial sentence "We conclude that when [refusals or tantrums] do occur they are likely to be wilful". Now that,

as is accepted on behalf of the Secretary of State, totally contradicts the medical evidence. It is of course fundamental that if a tribunal rejects evidence, as they are entitled to do they should have a good reason for doing so and should explain what that reason is. They did not do that in this case and everyone is left guessing at why the doctor's evidence was rejected. Next, there was evidence before the tribunal that Thomas did not walk normally. He had an erratic or spastic gait and was inclined to trip or fall. The tribunal said he had "a spastic gait with a tendency to trip up". Now all that, as it seems to me, goes to "manner in which he can make progress on foot" and in the face of that evidence the tribunal should have explained why they concluded that Thomas' manner of walking was not such that he was virtually unable to walk. It appears from the way the tribunal's findings were set out that Thomas tripped (and fell?) during the walking test but there is nothing to indicate how frequently that was or what the tribunal made of his doing so. Then the tribunal said that they accepted Thomas' need for an escort. But they did not explain whether the escort was needed to guide or support or restrain Thomas or stop him from falling over or pick him up when he did; what bearing did the need for an escort have on the question of whether Thomas was virtually unable to walk? The tribunal do not say. In all these various respects their decision is, as is accepted on behalf of the Secretary of State, erroneous in law and I allow the appeal.

(Signed) R A Sanders
Commissioner

Date: 12 April 1989