MJG/SH/5

Commissioner's File: CM/102/1990

SOCIAL SECURITY ACTS 1975 TO 1990

CLAIM FOR MOBILITY ALLOWANCE

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: [redacted]

Appeal Tribunal: Manchester

Case No: M/539/01/89

1. I allow the claimant's appeal against the decision of the medical appeal tribunal dated 7 August 1989 as that decision is erroneous in law and I set it aside. I remit the case for rehearing and redetermination to an entirely differently constituted medical appeal tribunal: Social Security Act 1975, section 112 (as amended).

2. This is an appeal to the Commissioner by the claimant, a woman born on 3 June 1930, against the decision of a medical appeal tribunal dated 7 August 1989, which dismissed the claimant's appeal from a decision of a medical board dated 12 July 1988. That decision was that the claimant did not satisfy the medical conditions for an award of mobility allowance (to be found in section 37A of the Social Security Act 1975 and regulation 3 of the Mobility Allowance Regulations 1975).

3. Appeal to the Commissioner in this jurisdiction lies only on questions of law. On all issues of fact, medical opinion, diagnosis etc, the decision of the medical authorities is final and not subject to appeal to the Commissioner. It follows that my having allowed the appeal in this case on the ground of error of law (see below) does not express or imply any opinion by me on whether or not in substance the claim to mobility allowance should succeed. That is entirely a matter for the new medical appeal tribunal to whom I have remitted this case.

4. The reason I have set the medical appeal tribunal's decision aside as being erroneous in law relates to the following parts of the medical appeal tribunal's reasons for decision,

> "We have read the scheduled evidence and heard the claimant who elected to walk in the corridor here - about 30 yards ... she walked in the corridor at a good pace and a slight left-sided limp, using a stick ... on this evidence

we cannot say that the appellant - in spite of her problems is virtually unable to walk and nor does she qualify for Mobility Allowance for any other reason."

5. In a written submission dated 27 September 1990, the Secretary of State's representative submits that the tribunal did not err in law in any respect but in written observations dated 28 February 1991 the claimant's representative submits as follows,

"I believe, with respect, that the Medical members of the Tribunal erred in law by failing to observe [the claimant] walking out of doors. Although I was not present at this particular Medical Appeal Tribunal hearing, I would question the use of the word 'elected' in connection with [the claimant's] walking test. It is my experience (and that of my colleagues throughout Greater Manchester) that it would have been a unique occurrence if the members of this Tribunal had offered [the claimant] any choice between an indoor and outdoor walking test without being prompted. It is our contention that, had [the claimant] been observed out of doors, the Tribunal would have been able to see how severe is her discomfort when making progress on foot out of doors, and how restricted is her mobility out of doors. By failing to offer her this opportunity, it is our contention that the Medical Appeal Tribunal breached the rules of natural justice."

6. The position as to this submission is as follows. It is entirely up to the medical members of the tribunal in the exercise of their expertise as to whether or not they administer an indoor or outdoor walking test. That has been so stated in a number of Commissioners' decisions in the past. However, it was held in a decision on file CM/103/1984 that where an indoor walking test takes place the medical appeal tribunal must make it clear in their reasons for decision that they took the indoor walking test into account in order to ascertain the claimant's walking ability <u>outdoors</u> because that is the factor to which the legislation requires reference (see regulation 3(1)(a)(ii) of the Mobility Allowance Regulations 1975) in the context of virtual inability to walk. Though in my view this is somewhat of a borderline case, the medical appeal tribunal do not appear to have expressed an opinion as to the ability to walk <u>outdoors</u>. Their reasons for decision could possibly be construed as meaning that they had judged solely by the indoor walking ability.

7. For that reason only I have set the medical appeal tribunal's decision aside. As stated above I must leave it entirely to the new medical appeal tribunal to arrive at what conclusions they consider correct in relation to the claim for mobility allowance.

(Signed) M.J. Goodman
Commissioner

(Date) 10 July 1991