MASTER Mobility Allowance — MAT in breach of nat. justice by deciding case on point not previously raised. Duty of MAT to give clear reasons if not renewing existing award & for their rejection of evidence.

JNBP/2/LS

Commissioner's File: CM/104/1985

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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: [redacted] (Mrs)

Medical Appeal Tribunal: Leeds

Original Decision Case No: Not known

Application for leave Case No: 704/84

1. My decision is that the decision of the medical appeal tribunal ("MAT") dated 10 January 1985 is erroneous in law and is set aside.

2. This is an appeal brought by the claimant with my leave against the above-mentioned decision of the MAT which confirmed the decision of a medical board dated 5 June 1984 that the claimant did not satisfy the medical conditions for an award of mobility allowance.

3. The claimant claimed mobility allowance on 9 June 1981 and pursuant to that claim and a subsequent renewal claim was awarded the allowance until 15 March 1984. On 12 December 1983 the claimant made a further renewal claim and on 20 February 1984 the medical practitioner to whom the medical question was referred reported to the insurance officer his opinion that the claimant was neither unable nor virtually unable to walk and that the exertion required to walk would neither constitute a dnager to her life nor be likely to lead to a serious deterioration of her health. The insurance officer accordingly disallowed the renewal claim and on 28 March 1984 the claimant appealed to a medical board. The medical board decided on 5 June 1984 that the medical conditions for an award were not satisfied and the claimant's representative then appealed to the MAT who on 10 January 1985 gave the decision now under appeal in the following terms:

> "All submissions were considered and the scheduled evidence examined. The claimant admits that she never has chest pains when walking, only following emotional shocks. We examined her lower limbs and her hip knee and ankle joints moved freely. She was apprehensive about free movements in the left knee, but there was no clinical instability. All her voluntary efforts at movement on the couch and walking were slow and laboured. We saw her walk some 25 yards in a hesitating fashion. We cannot reconcile this laboured walking with our clinical findings in the knee and ankle. Her defect in locomotion is not due to physical disablement. We confirm the Board's decision."

4. In the grounds of the present appeal Dr Martinez, on behalf of the claimant, points out that until the MAT decision quoted above there had been no suggestion in any medical evidence, in any opinion of an examining medical practitioner or in the decision of the medical board that the claimant's walking difficulties were due to anything other than physical disablement. I am in complete agreement with Dr Martinez's submission that the MAT acted in breach of the principles of natural justice in deciding the case before them on a point which had not been brought to the attention of the claimant or her representative. That submission is amply supported by the authorities cited by Dr Martinez namely, R v Industrial Injuries Commission ex parte Howarth (reported as an appendix to R(I) 14/68) and Decisions R(I) 4/71, 29/61 and 2/74. In R(I) 4/71 the learned

Commissioner said in paragraph 8:-

> "It is perfectly simple for a legally qualified chairman to explain to a claimant, or to his representative, or to the representative of the Secretary of State, as appropriate, that, on a provisional view of the evidence and/or of their own examination of the claimant, and in the absence of evidence to the contrary, there appears to be a condition (stating it) which has not previously been suggested and which is not covered by the Secretary of State's observations or submission."

That passage is equally applicable to the present case.

5. Dr Martinez also submits that the MAT erred in failing to give their reasons for rejecting the evidence of Dr Leddy who, in his letter dated 19 July 1984, said

> "[The claimant] suffers from osteoarthritis of both knees, the left knee requiring the removal of patella in 1981. After this operation there is still residual osteoarthritis which makes walking difficult and painful for her and she walks with aid of walking stick and is not very stable. In fact she has fallen recently causing fracture of right forearm which has required manipulation and is now in plaster.
>
> [The claimant] has had her right breast removed. In my opinion [her] condition is not likely to improve in the next 12 months.
>
> [The claimant] should be encouraged to walk, even if this is painful, the pain being eased to some extend by analgesics and anti-inflammatories."

6. In my view the above letter on its face supports the view that the claimant has a defect in locomotion as a result of a physical disablement. The MAT were, of course, entitled to take a different view of her condition and it appears that they must have done so. However, they did not state whether or not or to what extent they rejected Mr Leddy's evidence and it was particularly important for them to do so because they were in effect disallowing a benefit which had previously been granted and Mr Leddy's evidence was at least to some extent consistent with the views of the examining medical officers who had made the reports which led to the earlier awards of benefit. In this connection Dr Martinez draws attention to a passage in paragraph 5 of Decision R(A) 2/83 where the learned Commissioner said:-

> "Such determinations depend, however, largely upon individual medical opinion and, in my view, it is desirable that, when there has been a previous certification in respect of a condition relating to attendance allowance, in the absence of material change, careful consideration should be given to whether subsequent evidence warrants a different conclusion. It may be that the previous determination was plainly wrong."

The above-quoted passage is in my opinion applicable to mobility allowance in the same way as it is applicable to attendance allowance. Dr Martinez also relies on paragraph 9 of Decision R(A) 1/84 where the learned Commissioner said:-

> "In my opinion when the Attendance Allowance Board or a delegated medical practitioner thereof proposes to remove an existing award of attendance allowance, it is imperative that the claimant in question should be given clear and adequate reasons why that is being done".

That passage also is equally applicable to mobility allowance. In my view the MAT's decision is erroneous in law in that it did not give adequate reasons for the conclusion reached, in particular in relation to the evidence of Dr Leddy and the previous awards of mobility allowance.

7. There is one other matter which I should refer to. It relates to the final paragraph of the submission on behalf of the Secretary of State dated 9 August 1985 which seems to me to be based on a misunderstanding of the point being made by Dr Martinez. I accept that the weight to be attached to physical and mental disablement in cases where both factors may be present is for the medical authorities to decide and the answer to the question whether the one or the other is or both are responsible for an inability to walk is for their decision as a medical question. However, in the present case, as there had been no suggestion at any earlier stage of any mental disablement, the claimant had no opportunity of meeting that suggestion before it was made in the decision. It is true that medical findings once made can be challenged on appeal to the Commissioner on point of law but Dr Martinez is complaining that he had no opportunity to oppose proposed findings which had in no way been foreshadowed.

8. As I have found the decision of the MAT erroneous in law for the reasons given in paragraphs 4, 5 and 6 the appeal succeeds and my decision is as set forth in paragraph 1 above.

(Signed) J N B Penny
Commissioner

Date: 13 November 1986