

Failure of MAT to determine make a finding
In respect of all days for which benefit claimed
Unaffected by s. 71 1986 Act.

JJS/BC

Commissioner's File: CM/116/1986?

DHSS File: B 51023/1121

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: Derek M Hoare on behalf of John J Hoare (Deceased)

Medical Appeal Tribunal: Liverpool

Original Decision Case No: L/271/4/85

1. My decision is that the decision of the medical appeal tribunal is wrong in law. I set it aside and remit the case for hearing by a differently constituted medical appeal tribunal.

2. This is an appeal by the claimant on a question of law against the decision of a medical appeal tribunal given on 9 December 1985 in which the tribunal found that the claimant's degree of disability satisfied regulation 3(1)(b) and 3(1)(c) of the Mobility Allowance Regulations 1975 and awarded him allowance from the date of the decision.

3. The history of the matter is as follows. On 9 April 1984 the Secretary of State received a claim for mobility allowance from the claimant on the appropriate form. The adjudication officer referred the medical questions arising on the claim to a medical practitioner for an examination and report in accordance with regulation 53(2) of the Social Security (Adjudication) Regulations 1984 and as a result thereof the adjudication officer decided to disallow the claim. The claimant appealed to a medical board from that decision. On 25 February 1985 the medical board decided that the claimant did not satisfy the medical conditions for the allowance. The claimant then appealed to the medical appeal tribunal against the board's decision to disallow his claim. The medical appeal tribunal varied the decision of the medical board and in doing so stated as follows:

"We have heard Mr Venables on behalf of the claimant and considered all the scheduled evidence including the relevant regulations and the report from Dr Lightfoot dated 31 January 1985 and Dr C A Hopkins dated 14 February 1985. We have heard the claimant and observed him walking indoor 40 yards. He walked extremely slowly, was noticeably puffing and stopped several times. Towards the end of the exercise he did complain of pain in his left leg as well as discomfort and breathlessness. We noted his plethoric appearance. The diagnosis here is clearly one of obstructive airways disease which is considerably limiting his capacity for walking. We are of opinion his degree of disability satisfies the Mobility Regulations 3(1)(b) and 3(1)(c) and we award the allowance from today".

That decision is challenged on the basis that the medical appeal tribunal erred in law in not complying with regulation 34(4) of the Social Security (Adjudication) Regulations 1984 in that they did not include in such record a statement of the reasons for their decision included their findings on all questions of fact material to the decision. It seems to me that that contention is well founded. The fundamental questions of fact material to the tribunal's decision was whether the claimant satisfied the condition in respect of the day on which the claim was made and indeed such condition was thereafter satisfied in respect of the days for which benefit was claimed. The law on this question was dealt with by Mustel L J in Gadhok v Chief Adjudication Officer, decided in March of this year and as yet unreported, in the following passage:

"While I entirely sympathise with the practical considerations which impress the Commissioners, I find it difficult to see how their decision is supported by [Insurance Officer v Hemment 1984 1WLR851] or how it is consistent with the words of section 37A. Read as a whole, the leading judgment of Oliver L J in Hemment shows that there are two conditions precedent to a claim in respect of benefit for any day: first that the conditions are all satisfied on the day when the claim is received, and second that in respect of any day for which benefit is claimed the conditions are satisfied on that day. There is thus a continuing test for entitlement to a continuing benefit. But the case seems to me no warrant for holding that a claim once made is a continuing claim, which can be deemed to be repeated on every subsequent day. Satisfaction of the conditions in respect of any day for which benefit is claimed is necessary for recovery. But it is not sufficient for recovery. The conditions must be also satisfied in respect of the day on which the claim is made. Any other conclusion would, to my mind, leave section 37A and (7) without any effect."

Since that decision the Social Security Act 1986 has become law and section 71(3) provides that section 37A(7) shall cease to have effect. So that now the condition in respect of the day upon which the claim is made is no longer a bar to entitlement. But it is still necessary, as it always was, for a tribunal to make a finding in respect of any day for which benefit is claimed that the conditions are satisfied on such day. In the instant case the tribunal did not make any finding on such question. No express findings were made concerning the claimant's ability to walk on 9 April 1984 or in respect of any of the days prior to the tribunal's decision.

4. It is to be noted that the tribunal purported to award mobility allowance to the claimant, such a decision was in excess of their jurisdiction, the function of a medical appeal tribunal is to deal with the question whether the claimant did or did not satisfy the medical conditions for an award of mobility allowance.

The matter is referred back to a medical appeal tribunal and it will be necessary for that tribunal to bear in mind the provisions of regulation 53A of the Social Security (Adjudication) Regulations, a regulation added by the Mobility Allowance Amendment Regulations 1986 (SI 1986 No 1541), which now governs the determination of the medical question.

(Signed) J J Skinner
Commissioner

Date: 10 December 1986