

Need to assess ability to walk out of doors
- function of MATs Inquisitorial.

RAS/15/LM

Commissioner's File: CM/125/1988

DHSS File: B.51023/1548

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: Stanley Robert Shaw

Medical Appeal Tribunal: Manchester

Original Decision Case No: M/266/7/87

1. My decision is that the decision of the medical appeal tribunal dated 8 September 1987 is erroneous in law and I set it aside. The case must be reconsidered by a differently constituted tribunal.
2. The claimant appeals against the tribunal's decision confirming the decision of a medical board that the claimant was not entitled to a mobility allowance because he did not satisfy the medical conditions for an award.
3. The claimant had a heart attack in 1978 and the following year had a right sided stroke. According to Dr Howitt, consultant physician at Manchester Royal Infirmary, the claimant has residual angina of moderate severity. He is limited by chest pain and by pain in the legs predominantly from his arthritis; and, as I read his report, Dr Howitt confirms that the claimant suffers from occasional dizziness and staggers a little when walking. The reasons given by the tribunal for their decision are really nothing more than an incantation of the relevant provisions put negatively; as such they are likely to suffer and in my view do suffer from an incomplete appreciation of the claimant's case. Firstly, although the tribunal ritualistically refers to "the degree of limitation of the Claimant's ability to walk out of doors" the fact is they did not conduct an out-of-doors walking test and there is nothing to show how or why they were able to come to a conclusion with regard to out-of-doors walking ability from having seen the claimant walk indoors. Next, there is nothing to indicate that they took account of the claimant's dizzy spells and staggering. And though "continual pain" was the crux of the claimant's case there is absolutely nothing to explain why they took the view that "the degree of limitation of the Claimant's ability to walk out of doors ... without severe discomfort was not such ... " that he qualified. The tribunal's decision is plainly erroneous in law in the respects to which I have referred and I set it aside.
4. The Secretary of State supports the claimant's appeal but in the course of his submission says, with reference to the slight spasticity of the claimant's left foot, that as the effect of that on his walking ability was not specifically put in issue by the claimant the tribunal did not have to deal with it or at least make findings in respect of it. That, however, is quite wrong. All the adjudicating authorities in the system have an inquisitorial jurisdiction. It is for them to ascertain, with such help as they may get from the claimant and from other sources, whether the claimant qualifies for an award. The fact that the claimant does not raise a particular matter does not mean that the tribunal do not have to take full account of it.

(Signed) R A Sanders
Commissioner

1 Date: 2 March 1989