

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: Fatima Dhanani (Mrs)

Medical Appeal Tribunal: London North

Original Decision Case No: 84/25904

1. This is a claimant's appeal, brought with my leave, against a decision of the medical appeal tribunal ("the MAT") dated 26 November 1984 which confirmed a decision of a medical board dated 12 April 1984. My decision is that the said decision of the MAT is erroneous in law and is set aside. The case will now go back for hearing by a differently constituted MAT.

2. With characteristic objectivity, the Secretary of State has made an open submission to the Commissioner. Accordingly - and since the matter will have to be completely reheard - I can be brief. The material part of the findings and reasons recorded by the MAT reads as follows:

"The medical members did not think it necessary to examine the claimant.

We have observed the claimant walking out of doors for a distance of 100 yards or thereabouts in 6 minutes. She holds on to her husband's arm with her left hand. She walks slowly, apprehensively but lifts the right leg well off the ground. It was noticeable that when [one of the medically qualified members of the MAT] supported her on her right arm her pace increased. She claimed to be tired but her face remained impassive and there was no sign of or complaint of severe discomfort."

3. The observed rate of progress is extremely slow - little more than half a mile per hour. But I am prepared to accept that it was within the specialised province of the MAT to regard those bare statistics as not - of themselves - demonstrating virtual inability to walk. What does concern me, however, is the MAT's brusque treatment of the claimant's apparent inability to walk without some sort of support from another person.

4. As the Secretary of State rightly observes, the relevant regulations contemplate a prosthesis or other artificial aid to walking but make no express reference to the support of another person. That aspect was considered by the Tribunal of Commissioners which gave Decision R(M) 1/83. I quote from paragraph 22:

"There was as it seems to us ample evidence on which the medical appeal tribunal could have reached the conclusion that the claimant was at least virtually unable to walk; but if this was a decision that a person who is able to walk only with assistance is for that reason alone necessarily to be found unable or virtually unable to walk we disagree with it. The argument that on any other construction of the regulations regulation 3(2) is superfluous is, if valid, applicable to regulation 3(1)(a) as well as regulation 3(1)(b) and we do not consider that 'unable to walk' in regulation 3(1)(a) means unable to walk without assistance as we have defined it. No one would say of a fit child of five whom it was unsafe to allow out in the street unsupervised that he was either unable or virtually unable to walk. We consider that the need for such assistance is a facet of the manner in which a person can make progress on foot and is to be taken into account by the medical authorities in conjunction with any other matters in determining whether in terms of regulation 3(1)(b) the person concerned is virtually unable to walk."

5. I need do no more than quote this sentence from the submission of the Secretary of State:

"It is accordingly submitted that in deciding whether or not a claimant is virtually unable to walk within the terms of regulation 3(1)(b) of those regulations the MAT was required to decide how far such support was needed to enable her to walk and to apply the terms of the regulation taking the need for this support fully into account."

That is well said. It may well be that the MAT in this case went through the mental processes therein indicated - but it behoved the MAT expressly to indicate those processes in its recorded reasons. It did not do so - and that I consider to be error of law.

6. Accordingly, the claimant's appeal is allowed.

(Signed) J Mitchell
Commissioner

Date: 1 May 1986