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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: Peter Eggins

Medical Appeal Tribunal: Plymouth

Original Decision Case No: P21/4

1. This claimant's appeal succeeds. My decision is that the decision of the medical appeal tribunal (MAT) dated 21 May 1987 is erroneous in law.

2. On 14 November 1985 the Secretary of State received a claim for mobility allowance from the claimant on form MY1. An adjudication officer decided to disallow the claim, after obtaining a medical practitioner's report on MY22 on 21 January 1986 and the claimant appealed to a medical board who on 16 April 1986 decided that the claimant did not satisfy the medical conditions for the allowance. The claimant appealed against this decision to the MAT.

3. The claimant heard the appeal on 21 May 1987 and decided that the decision of the medical board was confirmed and that the claimant's physical condition as a whole was such that the claimant was not unable to walk, nor virtually unable to walk and that the exertion required to walk would not constitute a danger to his life and would not be likely to lead to a serious deterioration in his health. Their reasons for this decision, including their findings on all material questions of fact were:

"The appellant on his own evidence can walk for up to 300 yards before the pain which he experiences becomes sufficiently severe to stop him. Further, on his own evidence, although he feels unstable at times, falling is not a serious problem for him. Accordingly the Tribunal feels that the appellant does not satisfy Mobility Allowance Regulation 3(1)(b) and is not virtually unable to walk. There is no evidence that he satisfies Mobility Allowance Regulation 3(1)(c) and no submission to this effect."

4. There is a detailed chairman's note of the argument and the evidence given before the MAT and it is clear from this note that the question of the pain and discomfort that the claimant suffered while walking was in issue.

5. Regulation 3(1) of the Mobility Allowances Regulations 1975 provides:

"3. (1) A person shall only be treated, for the purposes of section 37A, as suffering from physical disablement such that he is either unable to walk or virtually unable to do so, if his physical condition as a whole is such that, without having regard to circumstances peculiar to that person as to place of

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residence or as to place of, or nature of, employment -

- (a) he is unable to walk; or
- (b) his ability to walk out of doors is so limited, as regards the distance over which or the speed at which or the length of time for which or the manner in which he can make progress on foot without severe discomfort, that he is virtually unable to walk; or
- (c) the exertion required to walk would constitute a danger to his life or would be likely to lead to a serious deterioration in his health."

6. Where pain and discomfort are in issue, it is clear that, in order to comply with the requirement imposed by regulation 31(4) of the Social Security (Adjudication) Regulations 1986 the MAT should include in the record of their decision a statement of the reasons for decision including findings on all questions of fact material to their decision the MAT should make findings as to the claimant's walking ability without severe discomfort and discount the walking ability with severe discomfort. The MAT found that it took up to 300 yards before the pain was sufficiently severe to stop the claimant; but what they had to consider was the walking that could be done without severe discomfort not the distance reached before the severe discomfort actually stopped the claimant from walking at all. For this reason, and for the reasons to the same effect put forward by the Secretary of State in paragraph 5 of his written submission dated 11 February 1988 with which I am in agreement, the decision of the MAT is erroneous in law.

7. My decision is set out in paragraph 1.

(Signed) V.G.H. Hallett
Commissioner

Date: 12 July 1988