of course set out its reasoning which it failed to do here. In coming to their conclusion the tribunal should take into account all aspects of the matter including the claimant's stepfather's letter dated 12 March 1981 where he states "Amanda is a hyperactive, mentally handicapped child, whose handicap has a physical cause, i.e. vaccine damage when 3 months old. I am the only person who can safely take her out walking because I am strong enough to control her usually. Her behaviour is so unpredictable and violent that the local special school (The Mellons) was forced to take her everywhere in a wheelchair. In the end the school refused to allow her to attend in November 1980. She manages to run out of the house and into the street on her own, she is a danger to herself and others because she runs straight into the road, completely unaware of the dangers". Further the tribunal should take into account the claimant's constituency Member's letter dated 11 November 1981 where he states "I have visited the home on a number of occasions. My view is that, while Amanda may have the physical power to walk, her own control is so erratic that she is liable to move in any direction without any warning and needs constant attention and holding when outside".

However as indicated above I think that the word "benefit" particularly in the context of "from time to time" merits a liberal interpretation involving mental stimulation from being able to get out and about without the claimant necessarily appreciating himself that he does derive mental benefit. Locomotion is of course not limited to walking.

12. I would add two matters. First Mr Owen referred in his submission to me to a report by Amanda's Social Worker. I cannot of course take that into account as that was not before the MAT. However the matter will be at large before the tribunal to whom I remit the case. Secondly problems arising in respect of mobility allowance have been subject to recent elucidation in general in the Decision of the Tribunal of Commissioners R(M) 1/83.

13. Accordingly the claimant's appeal is allowed.

(Signed) J. B. Morcom
Commissioner

R(M) 1/84 1.4.82

APPEAL FROM DECISION OF A MEDICAL APPEAL TRIBUNAL ON A QUESTION OF LAW

Mobility Allowance—Factors to be taken into account when determining whether a person is unable or virtually unable to walk.

The claimant was found by a medical appeal tribunal to suffer from retrolental fibroplasia with complete blindness, and hydrocephalus with symptoms including impairment of balance and marked impairment of capacity for spatial orientation. Only with the help of an intelligent adult to pilot her could she walk for reasonable distances at a satisfactory pace. The tribunal concluded that the claimant's need to be accompanied was not something to be taken into account when considering a person's walking ability and they decided that the claimant was neither unable nor virtually unable to walk.

Held, on appeal by the claimant to a Commissioner:

1. regulation 3(1)(b) of the Mobility Allowance Regulations 1975 is not to be construed so as to import a further test of a claimant's inability or virtual inability to walk, namely whether she is able to orientate herself spatially (paragraphs 9 and 10);

2. the claimant's impaired capacity for spatial orientation is, like her blindness, a handicap totally unrelated to her capacity or otherwise to perform the physical act of walking; accordingly those factors cannot be taken into account when determining whether she satisfies regulation 3(1)(a) or (b) (paragraph 11);

3. in order to satisfy regulation 3(1)(c) the exertion which might cause danger to life or a serious deterioration in health must be exertion involved in actually walking, not merely in the consequences of walking (paragraph 13).

N.B. This decision was subsequently upheld by the Court of Appeal; see Note and Appendix hereto.

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1. For the reasons set out below the decision of the medical appeal tribunal given on 2 December 1980 is not erroneous in point of law, and accordingly I dismiss this appeal.

2. The history of this case, which is concerned with a claim for mobility allowance, is set out in the submission of the Secretary of State dated 15 September 1981, and there is no merit in my repeating it here. Suffice it to say that on 2 December 1980 a medical appeal tribunal, confirming the decision of the medical board of 29 November 1979, dismissed the appeal, and leave to appeal to the Commissioner having been given by a medical appeal tribunal, the appeal was heard on 17 February 1982. At the request of the claimant I granted an oral hearing, and at that hearing the claimant was represented by Mr. R. Drabble of Counsel, instructed by Messrs. Lawrence Graham Middleton Lewis, Solicitors, and the Secretary of State by Mr. R. Aitken of the Solicitor's Office of the Department of Health and Social Security. I am grateful to both of them for their submissions.

3. The medical condition of the claimant does not appear to be in dispute. Unfortunately she is totally blind as a result of the administration of free oxygen at birth, her ophthalmic condition being known as retrolental fibroplasia. She also has some hydrocephalus with symptoms which include some impairment of balance and a marked impairment of capacity for spatial orientation. The practical effect of this is that she cannot walk outdoor from point A to point B without the help of an adult to pilot her. There can be no question of substituting a guide dog. However, she is capable of walking in the sense that she can put one foot in front of another, and provided that she is steered she can satisfactorily proceed for reasonable distances at a satisfactory pace without undue distress from one point to another. In the light of her medical condition, the medical appeal tribunal decided that she did not satisfy the statutory provisions for an award of mobility allowance.

4. The relevant statutory provisions are contained in regulation 3 of the Mobility Allowance Regulations 1975 as amended, of which paragraph (1) reads as follows:

"3.—(1) A person shall only be treated, for the purposes of section 37A [of the Social Security Act 1975], 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 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".

5. Mr. Drabble argued that the claimant satisfied one or more of provisions (a) (b) and (c), and that the tribunal were erroneous in point of law in reaching the decision that they did.

6. I am not sure whether Mr. Drabble seriously relied on regulation 3(1)(a), but insofar as he did, I consider his submission hopeless. This particular provision has been construed in Commissioners' Decisions in the past and it has been interpreted strictly. Thus, in paragraph 10 of R(M) 3/78 the learned Commissioner observed as follows:

> "The word 'walk' is an ordinary English word in common usage and, in the context of regulation 3, means to move by means of a person's legs and feet or a combination of them.... Whether a person is 'unable to walk' must always be a question of fact and degree. 'To walk' is a well known verb and doctors, who are aware of the medical condition of a claimant, using their expertise, would rarely have difficulty in deciding whether a person is or is not 'unable to walk' on seeing the person using or attempting to use his or her feet and legs and moving or being unable to move. In my opinion, a test of seeing a person walk by the medical members should rarely require further investigation other than in exceptional circumstances, which would be a matter for the medical members to decide. It is for the tribunal to decide the extent and nature of any tests in order to ascertain whether a claimant 'is unable or virtually unable to walk'."

Later in that decision, at paragraph 12, the learned Commissioner went on to say:

> "It was contended that the claimant was 'virtually unable to walk'. Mr. Taylor submitted that the words would include an ability to walk which is minimal, with which I agree, but I think the words could have a wider meaning than that; for instance, a person may have the physical capacity to walk but may be inhibited in some other way from being able to walk, which might constitute being 'virtually unable to walk'. I do not agree with the submission that inability to walk or virtual inability to walk must be considered in the light of the purpose for which walking is required, as was submitted. Further, I agree with the meaning given to 'virtually unable to walk' in paragraph 11 of Decision CM 1/76, reported as R(M) 1/78, as unable to walk to any appreciable extent or practically unable to walk".

7. In the present case the medical tribunal have seen the claimant and have reached the conclusion that she is physically capable of walking. Nor do I think that this matter is in any way in dispute. The claimant is physically capable of putting one foot in front of another, and if steered, of passing from point to point. Moreover, it would seem that she is able to do this in-doors *without such help*. However, Mr. Drabble sought to rely heavily on the liberalising effect of regulation 3(1)(b), which only came into

effect on 21 March 1979, i.e. after the decision was given in Decision R(M) 3/78. It is to be noted that this provision is concerned with walking "out of doors". In a nutshell Mr. Drabble's argument was that, although the claimant was, of course, physically capable of putting one foot in front of another, outside the home her inability to deal with spatial orientation, accepted by the tribunal as a medical fact, brought her within the scope of this particular provision. (In measuring a claimant's walking capacity under regulation 3(1)(b) any achievement which is at the expense of severe discomfort must be disregarded (see paragraph 9 of R(M) 1/81)). The tribunal's finding as to the claimant's walking ability was expressed as follows:

> "Outdoor walking is only feasible with the help of an intelligent adult to pilot her. In the claimant's case it has proved impossible to substitute a guide dog to assist her. With help she can walk for reasonable distances at a satisfactory pace and without undue distress and without risk to her health."

Mr. Drabble argued that the tribunal in reaching their decision failed to consider a crucial aspect of this case, namely the claimant's inability to orientate herself, with the result that she was unable without assistance to move out of doors from point A to point B. This disability meant that she was unable to walk within the meaning of regulation 3(1)(b), and the failure of the tribunal to realise this necessarily meant that their decision was erroneous in point of law.

8. In support of his submission he relied heavily on R(M) 2/81. In that case the claimant was not only blind, but also had a physical disablement in his balance mechanism and sense of direction, which made it impossible for him to control the direction in which he wished to move. The medical appeal tribunal decided that the claimant satisfied regulation 3 of the Mobility Allowance Regulations 1975 and they were upheld by the Commissioner. In paragraph 7 of that decision the learned Commissioner said as follows:

> "It seems to me that ability to walk involves proceeding from A to B. The distance from A to B may well of course be a relevant consideration in regard to deciding whether or not a person falls to be regarded as unable to walk within the meaning of the relevant statutory provisions. That issue, however, does not arise in the present case. The position in the present case is this. The claimant, if he is at point A, whether in his own house or anywhere else, and wishes to proceed to point B, he cannot do so. He can only reach point B if he is guided there by another person. In other words, although, as the medical appeal tribunal pointed out, the claimant's legs are capable of making the movements required in the activity of walking, he is in fact unable to walk to any place to which he desires to go without help and guidance from another person. I agree with the medical appeal tribunal that in those circumstances the claimant falls to be regarded as being unable to walk within the meaning of the relevant statutory provisions".

Presumably in the light of R(M) 3/78, which followed the principle laid down in paragraph 11 of R(M) 1/78, the Commissioner took the view that in his case the claimant succeeded under regulation 3(1)(b), which did not exist at the time the earlier decisions were reached, although in applying the proposition, which he was laying down, to walking in the claimant's own house—an extension which was not necessary for his decision—the learned Commissioner appears to have disregarded the well established principles held to apply to the meaning of regulation 3(1)(a).

9. On the medical evidence I have no doubt that the claimant could walk a reasonable distance at a satisfactory pace and without undue distress. The question at issue is whether or not I can import into regulation 3(1)(b) a further test of a claimant's inability or virtual inability to walk, namely whether the claimant is able to orientate himself or herself spatially.

10. Notwithstanding the decision in R(M) 2/81 I do not think that I am justified in doing any such thing. If the legislature had intended to include in regulation 3(1)(b) the kind of situation now under consideration, it would have clearly done so. Accordingly, I do not consider that the claimant satisfies the regulation.

11. I think that I can arrive at the same conclusion by a different route. It is not in dispute in this case that blindness in itself does not render a person unable or virtually unable to walk. It is an affliction which is wholly unrelated to the physical power to move one leg in front of another. Of course, it affects drastically the sufferer's scope for walking, in that, outdoors at least, he or she is in need of a guide, or more practically a guide-dog. But these are factors which are not directly concerned with the faculty of walking. Now, in the present case, the claimant, in addition to suffering from blindness, is inclined to disorientation in open spaces. This, in my judgment, is like blindness, a handicap totally unrelated to her capacity or otherwise to perform the physical act of walking. I appreciate, of course, that the consequence of the claimant's tragic disability is that, although she can walk, she cannot control without assistance the direction in which she walks. She has an ability to walk, but an inability to make proper use of the faculty. But unfortunately for the claimant her inability to control the direction in which she goes is a handicap which has nothing to do with her ability to walk in the first place, and accordingly is something which cannot be taken into account in determining whether the claimant satisfies regulation 3(1)(a) or (b).

12. Mr. Drabble submitted that the medical appeal tribunal had failed to take into consideration the claimant's propensity towards disorientation in the open, and had confined their consideration to her blindness *per se*. For the reasons given above, I am satisfied that the tribunal would have been wrong in law to have taken into account this further disability of the claimant, and that they were right to conclude that she did not satisfy the regulation.

13. Mr. Drabble further submitted that the exertion required to walk constituted in the claimant's case a danger to her life or would be likely to lead to a serious deterioration in her health within the meaning of regulation 3(1)(c). He appeared to have in mind the possibility that in walking unaided the claimant might incur "psychological stress" or "emotional distress". However, it is clear from the wording of regulation 3(1)(c) that what must cause danger to health, so as to bring the section into operation, is the exertion involved in the actual walking, not in the consequences of walking. It may be that, if the claimant goes out on her own without a guide, she would be severely upset. However, this arises from her having gone out walking on her own. It does not arise from the physical exertion involved in the process of moving her feet, one in front of another. Accordingly, Mr. Drabble cannot derive any assistance from regulation 3(1)(c).

14. The claimant's case is evocative of sympathy. Her condition is rare, and Mr. Drabble assured me that if a decision were given in her favour, this would not open the flood-gates for other claimants. However, whether or not the flood-gates would be opened by my decision is a wholly irrelevant matter. I have to consider, as a matter of law, what Parliament intended, whatever the consequences may be. For the reasons set out above, I do not

consider that the claimant satisfies regulation 3 and, in my judgment, the medical appeal tribunal's decision is not erroneous in point of law.

15. Whilst sympathetic to the claimant I have not option but to dismiss this appeal.

(Signed) D. G. Rice
Commissioner
