regarded the fact that the insurance officer supported the application for an extension of time as a special reason.

7. In the present case the medical appeal tribunal found the conditions for an award of mobility allowance contained in section 37A(1) and 37A(2) of the Social Security Act 1975 were satisfied by the claimant and that the claimant's inability or virtual inability to walk was likely to persist until age 75. The insurance officer on the basis of these findings made an award of mobility allowance to the claimant (who was at the date of claim aged 18) until the age of 75. This is a long term decision which has been implemented from the date of claim to the present. Had the insurance officer awarded the allowance (assuming that he was empowered to do so) for say 3 years only, leaving the claimant then to renew her claim, I should not have been prepared to consider this late application. But I take into account that the allowance will have been paid to the claimant for almost two years in the circumstances in which (even if it turns out to have been wrongly paid) it is inconceivable that the claimant should be required to repay it, and that if there can now be no appeal it will continue to be paid even if wrongly awarded for possibly more than 50 years. I consider that there are special reasons that make it appropriate that I should consider the application.

8. I have not overlooked that under regulation 22 of the Mobility Allowance Regulations 1975 payment will be suspended pending the decision of the appeal and (if it succeeds) pending the reference back to the medical appeal tribunal; and that if the decision is upheld or an equivalent decision on reference back is given there will have been a substantial delay in payment of the intermediate benefit. I was a little surprised to find that whereas with most benefits the suspension of benefit pending an appeal against a decision favourable to a claimant, if permitted at all, is permitted only where the appeal is started within (roughly) the first 21 days of the 3 month period normally allowed for an appeal, yet in the case of mobility allowance there is suspension of benefit even where an extension of time has had to be granted. I do not however think that I have any power to make it a condition of considering the present application that the right to suspend payment should be waived.

(Signed) J. G. Monroe
Commissioner

26.4.85

R(M) 1/88

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

Mobility Allowance—Physical Disablement—Hysteria.

The claimant injured his back in an accident in 1979. He was awarded mobility allowance to 24 June 1983. On his renewal claim a Medical Appeal Tribunal, confirming the medical board, found that his inability to walk was not due to a physical cause but was hysterical in origin. The claimant appealed to the Commissioner who had before him a psychiatric report which was not before the Medical Appeal Tribunal giving the opinion that the claimant's inability to walk

was caused by pain, not hysteria. The Commissioner rejected the argument that the MAT should not have decided the matter of hysteria without calling for psychiatric evidence on the ground that it was a matter for their own expertise. He also held that the question of whether the claimant's hysteria was a manifestation of his physical condition was a matter for the MAT and their decision that the cause of the inability to walk was not physical could not be disturbed.

In 1985 the claimant was in fact awarded mobility allowance for life on the basis of a psychiatric report giving a physical cause to the hysteria.

On 12 May 1987 the Court of Appeal (O'Connor, Lloyd and Stocker LJJ) dismissed his appeal and held (confirming the Commissioner) that:—

1. inability to walk is not itself a physical disablement: there must be some physical disablement such that the claimant is unable to walk;

2. on the evidence before them the MAT held that the claimant was suffering from a functional, not a physical, disablement, and that was a matter entirely for them.

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1. My decision is that the decision of the medical appeal tribunal dated 9 April 1984 was not erroneous in point of law.

2. The claimant is a man who was injured in an industrial accident in 1979, when he fell from a crane and injured his back severely. He is in receipt of various forms of social security benefit; but on this appeal I am concerned solely with his claim for mobility allowance. On his initial claim to mobility allowance a medical appeal tribunal found the claimant's physical condition as a whole to be such that he was virtually unable to walk and that this virtual inability was likely to last until 24 June 1983 and mobility allowance was awarded to him down to that date accordingly. The claimant made a renewal claim on which a medical practitioner expressed the opinion the claimant's physical condition as a whole was such that he was virtually unable to walk and that this inability was likely to continue for five years. But the matter was referred to a medical board who gave a decision dated 22 September 1983 to the contrary of this, holding that his physical condition as a whole was not such that he was either unable or virtually unable to walk. This decision was confirmed on appeal by the medical appeal tribunal. The material part of the reasons for their decision read as follows:—

> "We find that the restriction in the claimant's ability to walk is not due to a physical cause but is hysterical in origin. We come to this conclusion having considered all the scheduled evidence and what we have heard and seen today, and accordingly the claimant does not satisfy the requirements of the Mobility Allowance Regulations 1975 as amended and the appeal therefore fails."

3. Under section 37A(1) of the Social Security Act 1975 it is a condition of the title to mobility allowance that the person concerned should be suffering from physical disablement such that he is either unable to walk or virtually unable to do so; and subsection (2) of that section authorises the making of regulations in effect defining the circumstances in which this condition may be treated as satisfied. Regulation 3(1) of the Mobility Allowance Regulations 1975 as amended by the Mobility Allowance Regulations 1979 provides so far as material as follows:—

> "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 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."

4. The basic ground on which the medical appeal tribunal gave their decision did not depend on the details of sub-paragraphs (a), (b) and (c) above but on the finding that the limitations on the claimant's capacity to walk were not attributable to the state of the claimant's physical condition as a whole, but to hysteria, which they did not consider to be a manifestation of his physical condition as a whole. On behalf of the claimant it is urged that there was an error of law that led to this conclusion. A report from a consultant in forensic psychiatry which was not before the tribunal has been produced, in which the opinion is expressed that it is not the result of hysteria that the claimant is unable to walk, but that it is the result of pain; and this has been supplemented by a letter agreeing with it written by the claimant's own doctor. The claimant's advisers recognise, I think, that the decision of the medical appeal tribunal cannot be held to be erroneous in point of law on account of their having paid no attention to medical evidence or opinions that were not before them; and they submit accordingly in substance that they ought not to have ventured to reach a conclusion on a difficult matter like hysteria without calling for psychiatric evidence. It is also submitted that even if the claimant's condition is hysterically based this is still a manifestation of his physical condition as a whole.

5. I reject both these submissions. A medical appeal tribunal's medical members have their own expertise and it is in my judgement entirely for them to decide whether or not that expertise is sufficient when taken in conjunction with the evidence adduced to them by the claimant and the Secretary of State for Social Services to enable them to decide the medical question before them. They were entitled to take the view that they had sufficient evidence before them. I may add that if they had had the consultant's report before them they would not have been bound to agree with it, but could have given their reasons for disagreeing with it if they did disagree.

6. As for the second point, title to mobility allowance under section 37A and regulation 3(1) depends on a claimant's physical condition; this may be contrasted with, say, the attendance allowance which, under section 36 of the Act, may be awarded in respect of either physical or mental disablement. It may be that in the last analysis all mental disablement can be ascribed to physical causes. But, if so, it is obvious that the Act on drawing the distinction between physical and mental disablement did not mean this last analysis to be resorted to. In the case of the subject of Decision R(M)2/78 a medical appeal tribunal were concerned with a claimant who suffered from Down's Syndrome, sometimes called mongolism. The effect of the condition on that particular claimant was that he often refused to walk. The medical appeal tribunal decided that the nature of Down's Syndrome was such that it was a form of physical disablement and held that the claimant satisfied the medical conditions for an award of mobility allowance. The Secretary of State appealed but the Commissioner held that

it was for the medical appeal tribunal to determine what was a physical, and what was not a physical, cause of inability to walk and that their decision could not be disturbed. A converse case where a medical appeal tribunal decided that agoraphobia was not a physical condition occurred in Decision R(M)1/80 and again it was held that the medical appeal tribunal decision could not be disturbed. I do not see how I can reach a different conclusion in relation to hysteria. This does not mean that in every case of hysteria the medical authorities are bound to hold that a claimant's hysteria is not a manifestation of his physical condition as a whole; but it does mean that if they do so find it will be impossible to disturb their decision on the ground that they ought to have found it to be a manifestation of the claimant's physical condition.

7. The appeal fails.

Commissioner's File No: CM 136/84

(Signed) J G Monroe
Commissioner

SOCIAL SECURITY ACTS 1975–1981

APPENDIX TO R(M) 1/88

TONY JOSEPH HARRISON

v

THE SECRETARY OF STATE FOR SOCIAL SERVICES

(Transcript of the Shorthand Notes of the Association of Official Shorthandwriters Limited, Room 392, Royal Courts of Justice, and 2 New Square, Lincoln's Inn, London WC2A 3RC.)

Mr. D. C. HERBERT, instructed by Messrs Ingledew Brown Bennison & Garrett, London Agents for Messrs Chattertons (Boston), appeared for the Appellant (Applicant).
MR. P. J. WALKER, instructed by The Solicitor to the Department of Health and Social Security, appeared for the Respondent (Respondent).

JUDGMENT
(Revised)

LORD JUSTICE O'CONNOR: This appeal raises a short point under the provisions of Section 37(A) of the Social Security Act 1975 and the Mobility Allowance Regulations made under that statute. The short point raised by this appellant, who appeals with the leave of the court from a decision of the Commissioner, is whether his inability to walk, about which there is no doubt, which is due to hysteria, falls within the provisions of the legislation. The Medical Appeal Tribunal, agreeing with the Medical Board, came to the conclusion that this man's inability to walk was due solely to hysteria and therefore did not fall within the provisions of the relevant statutory wording.

The factual background can be stated very shortly. The appellant had an accident in 1979 when he fell off a crane and sustained a severe injury to his back. As a result of that, after a year or so, he had to have a laminectomy on lumbar 4/5, but he was left thereafter with a disability, namely that he had a "bizarre gait", as it is described in the medical reports, and he was in a wheelchair. He could move a few yards with the help of two sticks.

Initially he was awarded a mobility allowance, but the matter came up for review in 1983 and, as I have said, the Medical Board, who had a report from a doctor who expressed the opinion that he came within the regulation in that he was virtually unable to walk, rejected that. On their own examination and findings and on the evidence before them they came to the conclusion that he was not suffering from a physical condition which prevented him walking but that it was due to hysteria. He appealed to the Medical Appeal Tribunal, who upheld that award. The matter then came before the Commissioner.

Section 37(A), so far as material, provides:

> "Subject to the provisions of this section, a person who satisfies prescribed conditions as to residence . . . shall be entitled to a mobility allowance for any period throughout which he is suffering from physical disablement such that he is either unable to walk or virtually unable to do so."

Subsection (2) provides:

> "Regulations may prescribe the circumstances in which a person is or is not to be treated, for the purposes of this section, as suffering from physical disablement as is mentioned above, but a person qualifies for the allowance only if his inability or virtual inability to walk is likely to persist for at least 12 months from the relevant date."

The Mobility Allowance Regulations made under the statute provide, by Regulation 3:

A "(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 residence or as to place of, or nature of, employment—

B (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."

We are not concerned with paragraph (c).

C The Commissioner, in his decision of 26th April 1985, recited the material part of the findings of the Medical Appeal Tribunal as follows:

"We find that the restriction in the claimant's ability to walk is not due to a physical cause but is hysterical in origin. We come to this conclusion having considered all the scheduled evidence and what we have heard and seen today, and accordingly the claimant does not

D satisfy the requirements of the Mobility Allowance Regulations 1975 as amended and the appeal therefore fails."

The Commissioner then set out the statutory provisions, and he said in paragraph 4:

"The basic ground on which the medical appeal tribunal gave their decision did not depend on the details of sub-paragraphs (a) (b) and (c) . . . but on the finding that the limitations on the claimant's capacity

E to walk were not attributable to the state of the claimant's physical condition as a whole, but to hysteria, which they did not consider to be a manifestation of his physical condition as a whole."

The point of law which was raised before him he stated as follows:

". . . On behalf of the claimant it is urged that there was an error of law that led to this conclusion."

F He made reference to evidence which was available to him, namely a psychiatrist's report which said in effect that in his opinion the hysteria was itself due to pain which resulted from the original injury and subsequent operative treatment. That material was not before the Medical Board or the Medical Appeal Tribunal. The Commissioner continued:

". . . The claimant's advisers recognise, I think, that the decision of

G the medical appeal tribunal cannot be held to be erroneous in point of

A law on account of their having paid no attention to medical evidence or opinions that were not before them; and they submit accordingly . . . that they ought not to have ventured to reach a conclusion on a difficult matter like hysteria without calling for psychiatric evidence. It is also submitted that even if the claimant's condition is hysterically based this is still a manifestation of his physical condition as a whole."

B The Commissioner rejected both submissions. As to the second one he said, at paragraph 6:

". . . title to mobility allowance under section 37A and regulation 3(1) depends on a claimant's physical condition; this may be contrasted with, say, the attendance allowance which, under section 36 of the Act, may be awarded in respect of either physical or mental disablement. It C may be that in the last analysis all mental disablement can be ascribed to physical causes. But, if so, it is obvious that the Act on drawing the distinction between physical and mental disablement did not mean this last analysis to be resorted to. In the case of the subject of Decision R(M) 2/78 a medical appeal tribunal were concerned with a claimant who suffered from Down's syndrome, sometimes called mongolism. D The effect of the condition on that particular claimant was that he often refused to walk. The medical appeal tribunal decided that the nature of Down's syndrome was such that it was a form of physical disablement and held that the claimant satisfied the medical conditions for an award of mobility allowance. The Secretary of State appealed but the Commissioner held that it was for the medical appeal tribunal E to determine what was a physical, and what was not a physical, cause of inability to walk and that their decision could not be disturbed. A converse case where a medical appeal tribunal decided that agoraphobia was not a physical condition occurred in Decision R(M) 1/80 and again it was held that the medical appeal tribunal decision could not be disturbed. I do not see how I can reach a different F conclusion in relation to hysteria. This does not mean that in every case of hysteria the medical authorities are bound to hold that a claimant's hysteria is not a manifestation of his physical condition as a whole; but it does mean that if they do so find it will be impossible to disturb their decision on the ground that they ought to have found it to be a manifestation of the claimant's physical condition."

G For my part I agree with the approach which the learned Commissioner made to this problem. It seems to me that he directed himself on the facts of this case entirely correctly.

Mr. Herbert has submitted, relying on certain passages in the decision of the House of Lords in *Lees v Secretary of State for Social Services* (1985) A.C. 930, that the approach of the Commissioner should not be upheld by this court. *Lees* was an entirely different case. In *Lees* the problem was a very different one. The appellant was blind, and the blindness was due to physical causes. The question was as to whether the fact that she was unable to walk out of doors unless accompanied brought her within the provisions of the statute and the regulations. This court and the House of Lords held that they did not.

It will be seen that the consideration there was what was meant by an ability or lack of ability to walk. Both Lord Justice Eveleigh and I myself in this court tried to give simple definitions of what those words meant. Lord Scarman in the House of Lords agreed with what we said. But there is nothing that I can find in Lord Scarman's speech which really touches on the problems in this case.

Mr. Herbert, who has put his argument very effectively, has submitted that here is a man who is in a wheelchair. If one asks oneself, "Is that a physical disability?" he says the answer would be, "Yes. He has got a disability that he cannot walk." "Is walking a physical activity?" "Yes, it is." "Is he unable to walk as a result of a physical disability?" He submits that the answer should be "Yes", no matter what the underlying reason of his inability to move his legs may be.

In my judgment that is not the correct interpretation of the words of the statute. Section 37A, as I have already said, requires that the person should be suffering from "physical disablement" such that he is either unable or virtually unable to walk. The inability to walk is not itself the physical disablement. There must be some physical disablement such that he is unable to walk. In the present case on the evidence before them the Medical Board and the Medical Appeal Tribunal held that this man was not suffering from any physical disablement: he was suffering from a functional disablement. That was a matter which was entirely for them, and neither the Commissioner nor this court can possibly interfere with the finding.

That is sufficient to dispose of the appeal. It should be said that, subsequent to the decision of the Commissioner, the matter went before an adjudicator who granted the applicant mobility allowance for life from a date in 1985 because he had in front of him the report of the psychiatrist giving a physical cause to the hysteria and thus bringing the man within the statutory provisions. Thus the present appeal is really confined only to an attempt to achieve a payment during the period 1983 to 1985.

A In my judgment the Commissioner came to a correct decision in point of law and I would dismiss this appeal.

LORD JUSTICE LLOYD: I agree. I would only add that the decision in the Down's syndrome case R(M) 2/78 which is referred to by the Commissioner was, I notice, also referred to in the unsuccessful argument of Mr Drabble in *Lees v Social Services Secretary* at page 931. In the course B of his speech Lord Scarman at page 936 said:

> "The House was referred to a number of decisions given by Social Security Commissioners on the point of law raised in this appeal, from which it is clear that the question has given rise to differences of opinion. I am satisfied that Mr. Rice, the commissioner who heard this case, reached the correct conclusion in law and that other decisions C which differ from his on the law must be held to be to that extent erroneous."

I do not of course know whether R(M) 2/78 was one of the decisions which Lord Scarman had in mind as being erroneous. But having regard to what Lord Scarman said, it is clearly a decision which will now have to be regarded with caution.

D **LORD JUSTICE STOCKER**: I agree. I add a comment of my own only in defence to the interesting and skilful argument of Mr Herbert. The Commissioner, in the penultimate sentence of his decision, said:

> ". . . This does not mean that in every case of hysteria the medical authorities are bound to hold that a claimant's hysteria is not a manifestation of his physical condition as a whole; but it does mean E that if they do so find it will be impossible to disturb their decision on the ground that they ought to have found it to be a manifestation of the claimant's physical condition."

That sentence seems to me to encapsulate the position and constitutes a refinement of the findings of the Medical Tribunal. Hysteria is not itself a physical condition, since physical and hysterical conditions are often used F as contrasting terms, and in my view correctly so. The Commissioner points out, however, that where hysteria is itself a consequence of a physical condition, it is open to a Tribunal or Medical Board, as a matter of medical opinion, to find that where hysteria is caused by a physical condition, (for example due to pain due to some spinal condition), the inability to walk may itself be caused by that same physical condition. It may be, though we G do not know, that it was on that basis, that is to say the basis of the psychiatrist's report, which was not before the Medical Board or the Medical Appeal Tribunal, to the effect that the hysteria was caused by pain caused

A by a physical spinal condition, that the adjudicator was persuaded to grant a mobility allowance for the future.

We are here concerned with the position upon the facts which were before the Medical Board and the Medical Appeal Tribunal and the Commissioner, which relates to the past and is one in which that situation did not arise. Accordingly I agree with the judgments that have been B delivered by my Lords, and for the reasons they have given I also would dismiss this appeal.

Order: Appeal dismissed; no order as to costs save for legal aid taxation of the appellant's costs.
