

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

Mobility Allowance—Adequacy of Tribunal's Reasons for Decisions: factors to be taken into account when determining a person's walking ability when this was achieved with some manual support.

The claimant had suffered a right handed stroke. A Medical Appeal Tribunal, on consideration of her claim to Mobility Allowance, concluded that she did not satisfy the medical conditions. The members of the Medical Appeal Tribunal observed her walking outdoors and noted that she could walk 100 yards at a slower than average pace without stopping *and* with manual support, and with no evidence of distress. The claimant appealed to a Commissioner.

Held: The Tribunal's decision was erroneous in a point of law:

1. the Tribunal did not comply with regulation 31(4) of the Social Security Adjudication Regulations 1986;
2. where a claimant is found to have need of physical support in his/her walking, a Medical Appeal Tribunal should consider the following:
 - (i) does the need arise from physical causes? If the need does arise, and the need for assistance is not found to be so extreme as to deprive the assisted claimant's movements of the character of "walking" as ordinarily understood, the Tribunal should then consider:
 - (ii) would the withdrawal of such support render the claimant unable to walk as provided in regulation 3(1)(a);

or

render the claimant's outdoor walking ability so limited, or so limited without severe discomfort, as to render the claimant virtually unable to walk for the purposes of regulation 3(1)(b);

or

render harmful the exertion required to walk for the purposes of regulation 3(1)(c).

If the answer to (i) and any of the alternatives in (ii) is yes, then the Tribunal must then consider whether there could be substituted for that physical support the use of an artificial aid suitable in the claimant's case.

The Commissioner noted that the Tribunal did not consider whether the support required came within the ambit of physical support or was merely assistance of a precautionary or reassuring nature. Appeal allowed.

1. My decision is that the decision of the medical appeal tribunal dated 24 May 1988 is erroneous in law and is set aside. The claimant's case is referred to another tribunal for reconsideration.

2. This is an appeal by the claimant, with leave on a question of law, against the above-mentioned tribunal decision. I directed an oral hearing in this case and in the case on Commissioner's file CSM 95/88 which raised a similar issue in order to consider the implications in mobility allowance cases of a medical appeal tribunal's evaluation of a claimant's walking ability when this was achieved with some manual support. In the present case the claimant was unable to attend the hearing in Edinburgh but was represented by Miss I Marshall of the Social Work Department, Saltcoats, and the Secretary of State was represented by Mr. D. Cassidy of the Office of the Solicitor to the Secretary of State for Scotland.

3. This appeal arises from a claim for mobility allowance made by the claimant on 18 November 1986. The claimant was then aged 55 and her mobility was affected by the consequences of a right-sided stroke suffered some 8 years previously. Although an examining medical practitioner initially expressed the view that the claimant was virtually unable to walk an

adjudication officer referred the case to a medical board who by decision dated 17 February 1987 held that the claimant was not unable or virtually unable to walk. The claimant appealed to a medical appeal tribunal. There was thereafter some considerable delay arising over dubiety as to the claimant's ability to attend a hearing in Glasgow. Ultimately on 24 May 1988 a medical appeal tribunal made a domiciliary visit and the hearing took place in the claimant's home.

4. The decision of the medical appeal tribunal confirmed the decision of the medical board. The findings and reasons stated by the tribunal for their decision were in the following terms:—

"Having considered all the written and oral evidence and having observed the claimant walking outside we find that she does not satisfy the medical conditions for mobility allowance. She walked 100 yards at a slower than average pace without stopping and with manual support and with no evidence of distress. She made no complaint of discomfort. Although her walking is limited to some extent by speed this is not so limiting as to render her virtually unable to walk. The exertion required to walk is not a danger to her life or health. Her pulse rate was normal and she was not breathless."

5. The claimant's appeal to the Commissioner was based on the contention that she needed and was given assistance to walk by one of the medical appeal tribunal doctors. At the hearing before me Mr. Cassidy adhered to the written submission lodged on behalf of the Secretary of State in which it was submitted in view of the tribunal's reference to "manual support" that it was incumbent upon the medical appeal tribunal to determine and explain whether the claimant required actual physical support in order to walk, taking into account any suitable artificial aid, or whether she was merely given guidance or supervision. It was accordingly submitted that the decision of the medical appeal tribunal was erroneous in point of law through want of compliance with regulation 31(4) of the Social Security (Adjudication) Regulations 1986 in that the nature of the "manual support" given to the claimant was not made clear. For the reasons more fully appearing in this decision I accept that submission.

6. Mobility allowance is payable under the provisions of section 37A of the Social Security Act 1975, the leading sub-section of which is in the following terms:—

"37A.—(1) Subject to the provisions of this section, a person who satisfies prescribed conditions as to residence or presence in Great Britain 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."

However regulations made under section 37A(2) (the Mobility Allowance Regulations 1975, as amended), contain the following provisions:—

"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 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

7. According in relation to movements of *Lees v Secretary of State* Lords held that the claimant was not virtually unable to walk. The leading speech Lord S

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Later in his 3(1)(b) of the not walk out observed:—

"... if blind per

8. It follows to walk which be approached ordinary comm maintenance unassisted. The person concerned relevant tests for walking m virtually unab

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- 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."

7. According to the Shorter Oxford Dictionary the meaning of "to walk" in relation to human beings or other bipeds is "to progress by alternate movements of the legs, so that one of the feet is always on the ground." In *Lees v Secretary of State for Social Services* [1985] 1 AC 930 the House of Lords held that the requirement of guidance in the case of a blind person with impaired capacity for spatial orientation does not detract from ability to walk. The leading opinion was given by Lord Scarman. In the course of his speech Lord Scarman observed:—

"Walk' is, of course, an ordinary English word; but the task which faces your Lordships is to determine its meaning in the context of section 37A of the 1975 Act and of the regulations made thereunder. That is a matter of law to be determined by applying the judicial process of statutory interpretation to the section and to the regulation."

Later in his speech Lord Scarman rejected an argument that regulation 3(1)(b) of the Mobility Allowance Regulations entitled a person who could not walk out of doors unaided to be held to be virtually unable to walk. He observed:—

"... if unaided walking ability is the test, it inevitably means that no blind person can walk, which is absurd ..."

8. It follows from the above in my judgement that the question of ability to walk which is to be evaluated under the relevant statutory provisions is to be approached on the basis of the ordinary meaning of "to walk" with its ordinary connotations of forward movement by the legs, weight bearing and maintenance of balance upright. The walking ability need not however be unassisted. Thus a need for guidance in walking does not mean that the person concerned is unable or virtually unable to walk for the purposes of the relevant tests. On the other hand however a requirement of physical support for walking may lead to a conclusion that the person concerned is unable or virtually unable to walk.

9. Accordingly if a mobility allowance claimant is regarded as being in need of assistance in walking the reason for the need and the nature of that assistance should be made clear, so that guidance, when required, or assistance of a precautionary or reassuring nature, may be distinguished from physical support. If a claimant is found to have need of physical support in his or her walking, a medical appeal tribunal should consider (1) whether the need arises from physical causes so as to represent a relevant need for the purposes of the allowance. If the need does so arise, and assuming the need for assistance is not found to be so extreme as to deprive the assisted claimant's movements of the character of "walking" as ordinarily understood, the tribunal should then consider (2) whether the withdrawal of such support would be likely to render the claimant unable to walk as provided in regulation 3(1)(a), or render the claimant's out door walking ability so limited, or so limited without severe discomfort, as to render the claimant virtually unable to walk for the purposes of regulation 3(1)(b), or (conceivably) render harmful the exertion required to walk for the purposes of regulation 3(1)(c). Thereafter if the tribunal have found in the affirmative on the first point mentioned and one or other of the alternatives of the second they require to consider whether there could be substituted for that physical support the use of an artificial aid suitable in the claimant's case as mentioned in regulation 3(2) of the Mobility Allowance Regulations. The

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remaining issues arising under section 37A must of course also be considered.

10. In the present case there was some evidence before the medical appeal tribunal that the claimant suffered from some generalised inbalance and had periodic dizzy turns. The tribunal very properly stated that when her walking ability was tested the claimant walked "with manual support". But that statement, given without further explanation, does not disclose whether the support fell into the category of physical support or was merely assistance of a precautionary or reassuring nature. It is therefore impossible to tell if the further issues which I have mentioned arose, but if they did they were manifestly not dealt with.

11. The decision of the tribunal must be set aside as erroneous in law and the claimant's case referred to another medical appeal tribunal for reconsideration in the light of the observations made above. It should perhaps be mentioned that although the date of claim in this case was 18 November 1986 the tribunal are by virtue of section 37A(2A) of the Social Security Act 1975, as amended, entitled to take account of any inability or virtual inability to walk should they find such to be established at the date of their hearing or some intervening date.

12. The appeal of the claimant is allowed.

Commissioners' File No: CSM 82/88

(Signed) J. G. Mitchell
Commissioner