

CSM 1/81

DR/IM

SOCIAL SECURITY ACTS 1975 TO 1981

APPEAL TO THE COMMISSIONER FROM DECISION OF
MEDICAL APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision No: C.S.M.1/81

1. My decision is that the decision of the medical appeal tribunal dated 16 July 1980 awarding mobility allowance to the claimant is not erroneous in point of law and therefore does not fall to be set aside.

2. The claimant claimed mobility allowance on 28 February 1979. Under section 37(a) of the Social Security Act 1975 a person who satisfies certain conditions is entitled to 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. Under said section 37(a) it is laid down that regulations may prescribe the circumstances in which a person is or is not to be treated for the purposes of that section as suffering from such physical disablement as warranting an award of the said allowance. Regulation 3 of the Mobility Allowance Regulations 1975 laid down the circumstances in which, for the purposes of said section 37(a), a person is or is not to be treated as suffering from physical disablement such that he is unable or virtually unable to walk. The said regulation 3 was amended by Mobility Allowance Amendment Regulations 1979 which came into effect on 21 March 1979 i.e. a few weeks after the claimant's claim for the said allowance. In this case nothing turns on the said amendments, and it will therefore be convenient to refer to the amended regulation 3 which is in the following terms:-

"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)

- (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.

(2) A person shall not 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 he is not unable or virtually unable to walk with a prosthesis or an artificial aid which he habitually wears or uses or if he would not be unable or virtually unable to walk if he habitually wore or used a prosthesis or an artificial aid which is suitable in his case."

3. On 28 March 1979 the claimant was examined by a medical practitioner, and in the light of that medical practitioner's report the insurance officer decided that the claimant was not unable to walk or virtually unable to do so because of physical disablement. The claimant appealed against that decision, and on 24 July 1979 the claimant was examined by a medical board. The board decided that the claimant was not unable to walk or virtually unable to do so because of physical disablement. The claimant thereafter appealed to a medical appeal tribunal, and on 16 July 1980 a tribunal allowed his appeal and held that he was entitled to the said allowance from 6 June 1979. The Secretary of State for Social Services thereafter applied to a medical appeal tribunal for leave to appeal to a Commissioner on the ground that the said tribunal's decision was erroneous in point of law. On 12 November 1980 a medical appeal tribunal granted leave to appeal. In due course an oral hearing in connection with the claimant's appeal took place before me.

4. A Commissioner is not entitled to interfere with a medical appeal tribunal's decisions on questions of fact or medical opinion. In this case, however, there is in my opinion really no dispute about the facts. The only question at issue is a legal one which is considered below. The relevant facts and circumstances are as follows. The claimant has for many years been completely blind. That disability, however, did not prevent the claimant from working successfully as an employee of the Royal Dundee Institution for the Blind. He was able to proceed alone in public places and to travel on his own each day by public transport. About 1967 he obtained a guide dog, and this enabled him to go alone in the city of Dundee, where he lived, at all times including peak traffic hours. About 1973, however, the claimant had an unfortunate accident whilst walking with his wife in the centre of Dundee. An iron bar fell from some scaffolding hitting him on the head as a result of which he suffered severe injuries to his head including a fracture of the skull. He became extremely deaf as a result of the said head injury.

/ Also,

Also, his physical condition as a result of the said head injury had deteriorated over the years. He suffers from attacks of vertigo and dizziness. The important point to note, however, in regard to the present case is that although he is able to make the movements required in the activity of walking, he lacks the ability to control his movement in respect of any direction because of physical impairment (the effects of the said head injury).

5. The medical appeal tribunal of 16 July 1980 decided that the claimant fell to be regarded as unable to walk and that he was therefore entitled to mobility allowance. The tribunal's findings and reasons for their decision are as follows:-

"The claimant's legs are capable of making the movements required in the activity of walking but he is blind and has a physical disablement in his balance mechanism and sense of direction which makes it impossible for him to control the direction in which he wishes to move. Whilst he is thus physically able to move on his feet he lacks the ability to control his movement in respect of any direction because of a physical impairment. [In our view walking involves not only the ability to move on one's feet in space but to move effectively, that is to say to move in an intended direction on one's feet. With human guidance he can be steered and can with much help but only with much help progress in a straight line on a desired direction. The necessity for this human guidance in our view does not make him able to walk for the purpose of the Act or the Regulations.] We note that Regulation 3(2) is specifically limited to prosthesis or artificial aids and makes no mention of human aid which plainly falls into quite a distinct category of case. We know of no artificial aid which could enable this claimant to walk. He has no discomfort in his walking and the exertion would not be prejudicial to his health or life. He can only walk for short distances with his wife's help. He requires to stop on occasions on account of dizzy spells. But we decide the case on the ground that his lack of directional mechanism deprives him of effective outdoor mobility."

6. It is maintained on behalf of the Secretary of State for Social Services that the said medical appeal tribunal's decision dated 16 July 1980 is erroneous in point of law and falls to be set aside. The Secretary of State's grounds for putting forward that contention (which were amplified at an oral hearing before me by his representative) are as follows:-

/"The

"The Secretary of State submits that the decision of the Medical Appeal Tribunal dated 16 July 1980 is erroneous in law. Whether a person is unable to walk is a question of fact. But what 'unable to walk' means is a question of law and the Tribunal appear to have taken account of the claimant's inability to control the direction of his walking in the sense that he cannot effectively achieve a desired destination without guidance. The Secretary of State submits that the Tribunal were wrong in law to do so in view of the definition of 'walking' within the meaning of the Mobility Allowance Regulations 1975 (as amended) laid down by the Commissioners (R(M)1/78 and R(M)3/78) and submits that if a person can achieve a desired destination by walking, notwithstanding that he has to be guided there, he is not unable or virtually unable to walk."

7. The medical appeal tribunal's reasons for reaching their decision have been very clearly set forth by the tribunal. I agree with their findings and reasons for their decision, and I consider that there is little I can add in that connection. I would merely state 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. The claimant is therefore entitled to mobility allowance as decided by the medical appeal tribunal.

8. The appeal brought on behalf of the Secretary of State for Social Services is disallowed.

(signed)

Douglas Reith
Commissioner

Date: 21 October 1981

Commissioner's File: C.S.M.1/81
D. of H. & S.S. File: B.51023/217