

* 16/92

MAT Peters (Law Clerk) - Pension
CLAIM

DR/JOB

Commissioner's File: CSM/91/90
*16/92

SOCIAL SECURITY ACTS 1975-1990

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: STEVEN CHALMERS

Medical Appeal Tribunal: Glasgow

Case No: GLW 262/06/89

1. My decision is that the decision of the medical appeal tribunal dated 1 September 1989 is erroneous in law and is therefore set aside.

2. This case is concerned with a claim for mobility allowance made on behalf of a claimant who was born on 11 March 1974. He suffers from a very severe illness. That illness is described in a medical report as follows:-

"As already documented, Steven suffers from San Fillipo disease Type B a rare inherited form of Mucopolysaccharidosis. This takes the form of a progressive organic dementia. The long term prognosis is grave and usually characterised by progressive mental deterioration and physical deterioration at a later stage; hence I would emphasize that there is an undoubted physical basis to Steven's mental retardation."

3. Under section 37A of the Social Security Act 1975 a person is entitled to mobility allowance for any period throughout which he is suffering from a physical disablement such that he is either unable to walk or virtually unable to do so. At the time in question physical disablement such that a person is unable or virtually unable to walk was defined in regulation 3(1) of the Social Security (Mobility Allowance) Regulations 1975 (as amended) as follows:-

"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 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. With regard to a claim for mobility allowance which was made on behalf of the said claimant a medical practitioner, who examined the claimant, advised that the claimant was not unable to walk but was virtually unable to do so. In the course of his report dated 16 May 1984 the said medical practitioner stated "Mechanically there is no abnormality but there is such gross cerebral dysfunction that there is no useful locomotion." The said medical practitioner stated that the claimant suffered from San Fillipo disease. Thereafter mobility allowance was awarded to the claimant from 20 March 1984 to 19 March 1989. On 29 December 1988 a renewal claim for mobility allowance was received. This case is concerned with that renewal claim.

5. In connection with the said renewal claim the claimant was examined by a medical practitioner on 7 February 1989. That medical practitioner expressed the view that the claimant was not unable to walk but was virtually unable to do so. In the course of his report he stated as follows:-

"He [the claimant] was observed walking 100 yds. He needed continual supervision with both hands held to prevent him walking off on his own or interfering with individuals in street, parked cars etc. His mobility is therefore grossly impaired."

The adjudication officer decided that he was unable to decide the claim on the basis of the said medical report, and the medical questions were therefore referred to a medical board. On 20 April 1989 the claimant was examined by a medical board, and the board decided that the claimant was not unable to walk or virtually unable to do so because of physical disablement. The board stated that the claimant suffered from mental retardation, and in their report they stated "He. [the claimant] was able to walk but required direction by a parent at each side."

6. An appeal against the medical board's decision to a medical appeal tribunal was received. A hearing took place before a medical appeal tribunal on 1 September 1989, and the tribunal confirmed the decision of the medical board. The reasons for the tribunal's decision were as follows:-

"Steven is able to walk and was observed to walk, but his lack of understanding is such that he requires constant supervision and restraint by 2 individuals when walking. The cause of his disability is physical. With regret the Tribunal have concluded that Steven does not satisfy Regulation 3(1)(a), (b) or (c). We dealt with (a). So far as (b) is concerned we find that his ability to walk out of doors is not limited as regards distance, speed, or length of time for which he can walk by any cause nor is the manner in which he can make progress on foot limited by severe discomfort. He suffers no discomfort. (c) the exertion required to walk does not constitute a danger to his life nor is it likely to lead to a serious deterioration in health."

Thereafter a late application for leave to appeal to a Commissioner on a question of law from the tribunal's said decision was made, and that application was granted by a Commissioner. I am now concerned with the appeal. The said application for leave to appeal was made by a consultant Community Paediatrician who had looked after the claimant for the previous

four years. He pointed out that the claimant suffered from the rare condition of San Fillipo Type B with a gross neurological deterioration. The said consultant also stated that the claimant was the most severely handicapped child needing constant attention in the area in question. The said consultant also expressed the view in various letters that he considered that the claimant should clearly be found entitled to mobility allowance.

7. In a written submission made on 4 March 1991 which has been made on behalf of the Secretary of State for Social Security it is maintained that the grounds of appeal put forward on behalf of the claimant concerned mainly medical issues which were matters exclusively for consideration by the medical appeal tribunal in question in exercise of their expertise and were not subject to appeal to the Commissioner to whom appeal lay only on a point of law. In the said submission, however, it is stated as follows:-

"7. The MAT in this case were dealing with a renewal claim following an earlier award of Mobility Allowance which expired on 19 March 1989. In the light of the Tribunal of Commissioners decision CM/205/1988, it is submitted that in the case of renewal claims, a tribunal should "explain to a claimant why they have come to their conclusion and [this] means that they must explain in what way and why that conclusion differs, in cases where it does differ, from earlier conclusions". The Tribunal of Commissioners went on to state that "there may be cases where the tribunal takes the view that the earlier awarding medical authority came to a wrong conclusion and in that event they will have so to say, but also indicate briefly in what way".

8. It is submitted that the MAT have made no findings on this point and the Secretary of State's representative submits therefore that their decision is erroneous in law for this reason."

In this connection I would point out that in a recent decision given by a Commissioner on Commissioner's file CM/44/91 dated 28 August 1991 it is contended with regard to the said decision by a Tribunal of Commissioners that a decision by a medical appeal tribunal is not necessarily erroneous in law if it does not explain with regard to a renewal claim why it disagrees with a previous award of mobility allowance. An appeal against that Commissioner's decision is, I understand, due to be heard by the Court of Appeal in England in due course. The position in the present case, however, in my opinion is that it is a case in which the medical appeal tribunal in question had a duty to explain to the claimant's parents who had made the appeal to the tribunal why they considered that the claimant was no longer entitled to mobility allowance. As already explained the claimant had been awarded mobility allowance from 20 March 1984 to 19 March 1989, and he was a person who, as stated above, suffered from a disease which took the form of a progressive organic dementia and the long term prognosis was grave and usually characterised by progressive mental deterioration and physical deterioration at a later stage. In those circumstances there was in my opinion as already stated a duty on the part of the tribunal to explain to the claimant's parents why mobility allowance was in their opinion no longer payable to the claimant. It is also of importance to note that the present case was not involved with a person who merely required guidance in connection with being able to walk from A to B. This is therefore not a case similar to the case of Lees v Secretary of State for Social Services 1985 1 A.C. 930 decided by the House of Lords. It is the type of case dealt with by a Tribunal of Commissioners in decision R(M)3/86. I consider that the tribunal have not dealt in

sufficient detail with this aspect of the case. Furthermore, although this is not entirely clear from the tribunal's decision, it would appear that the tribunal have taken the view that since the claimant did not suffer from severe discomfort he could not be found entitled to mobility allowance. If the tribunal took that view, it is erroneous in law having regard to what was laid down by a Commissioner in decision R(M)1/81. In all the circumstances I have decided that the tribunal's decision must therefore be set aside as being erroneous in law. In this connection I would point out that having regard to the amendment made to section 112(6) of the Social Security Act 1975 by the Social Security (Introduction of Disability Living Allowance) Regulations 1991 I must not refer the case back for reconsideration by a medical appeal tribunal but I must refer the case to an adjudication officer. I would also draw the attention of the claimant's parents to the fact that the legal provisions relating to an award of mobility allowance have been altered to a substantial extent as from 6 April 1992 by the Disability Living Allowance and Disability Working Allowance Act 1991. Accordingly, whatever may happen in regard to the claim for mobility allowance dealt with in my present decision consideration should be given by the claimant's parents for the submission of a fresh claim in connection with the new legislation which is coming into effect.

8. The appeal brought on the claimant's behalf is allowed.

(signed) Douglas Reith
Commissioner
Date: 4 March 1992