

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow the claimant's appeal. I set aside the decision of the Cardiff appeal tribunal dated 3 January 2002 and I refer the case to a differently constituted appeal tribunal for determination.

REASONS

2. The claimant claimed disability living allowance with effect from 13 March 2000 but her claim was disallowed. She appealed but her appeal was dismissed. Her case was that her ability to walk was very limited due to arthritis and she was liable to fall due to both giddiness and to difficulty in co-ordinating her crutches. In relation to the mobility component, the tribunal considered that the claimant was not virtually unable to walk and then, turning to the lower rate, said:

"... the evidence did not show that [the claimant] required supervision or guidance except possibly in relation to falls. It was clear, however, that in practice she would not have been walking in unfamiliar surroundings because of the limitation of mobility which the Tribunal was satisfied existed at the time of the decision even if this was slightly greater as [sic] at the time of the claim."

In refusing leave to appeal, the tribunal chairman said:

"There is no point in making an award if its purpose is frustrated."

The claimant now appeals against the tribunal's decision with my leave and the support of the Secretary of State.

3. The claimant's representative points to the language of section 73(1)(d) of the Social Security Contributions and Benefits Act 1992, which, together with section 73(11)(b), provides that the lower rate of the mobility component of disability living allowance is payable to a claimant if –

"he is able to walk but is so severely disabled physically or mentally that, disregarding any ability he may have to use routes which are familiar to him on his own, he cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time."

It is submitted that it was irrelevant whether the claimant actually walked on unfamiliar routes; the question was whether or not she *could* do so without guidance or supervision. I agree. Furthermore, a tribunal must ignore any ability to use familiar routes but is not entitled to ignore any *inability* to use familiar routes. Thus, in a case like the present where a claimant does not in fact walk on unfamiliar routes, it is useful to start by asking whether the claimant is unable to walk on familiar routes without guidance or supervision. If the answer is "no", the statutory provision is satisfied. If the answer is "yes", it is necessary to consider whether the claimant's disability is such that it would make any difference if the routes she or she did walk on were unfamiliar. In the present case, the tribunal appear to have thought it

unnecessary to make a finding as to whether the claimant could use even familiar routes without guidance or supervision.

4. It would be surprising if the tribunal's approach were correct because the effect would be that a person whose ability to walk was limited but who was not quite so disabled that it could be said that he or she was virtually unable to walk would be less likely to qualify for the lower rate of the mobility component than a person who was able to walk long distances, even though both required supervision or guidance when walking. The chairman is, of course, right that there is no point in making an award if its purpose would be frustrated. However, the frustration of the purpose of awards is dealt with by section 73(8), which provides:

“A person shall not be entitled to the mobility component for a period unless during most of that period his condition will be such as permits him from time to time to benefit from enhanced facilities for locomotion.”

The fact that a person chooses not to walk in unfamiliar areas does not frustrate the purpose of an award of the lower rate of the mobility component if the person is able to benefit from enhanced facilities for locomotion. This is because there is nothing in section 73(1)(d) to justify the view that the only purpose of such an award is to enable a person to pay for guidance and supervision when walking on unfamiliar routes. He or she might use the benefit to pay for someone to provide guidance or supervision when he or she wished to walk over short, familiar routes or to pay for someone to push a wheelchair to enable the claimant to travel over any route without the need for walking. Alternatively, the benefit could be used to purchase transport, thus enabling the claimant to travel over unfamiliar routes without the need for any help from another person at all. Section 73(1)(d) merely provides a test to enable it to be determined whether a person's practical mobility is sufficiently limited to justify financial help being provided. No limit is placed on the type of enhanced facilities for locomotion that a claimant might use that help to obtain. Only if the claimant cannot benefit from *any* enhanced facilities for locomotion does section 73(8) come into play.

5. It is common ground that this case should be referred to another tribunal who will be able to make the necessary findings of fact. All issues on the claim will be open before the tribunal. The parties should ensure that the tribunal are informed of any further claims to disability living allowance made since the one that is the subject of these proceedings and of the outcome of any such claims.

(Signed) **MARK ROWLAND**
Commissioner
11 March 2003