

JSW/BF

Commissioner's File: CM/118/1985

C A O File: AO Not Known

Region: Midlands

SOCIAL SECURITY ACTS 1975 TO 1984
CLAIM FOR MOBILITY ALLOWANCE
DECISION BY TRIBUNAL OF COMMISSIONERS

Name: Jillian Joy Clay (Mrs)

Appeal Tribunal: Sheffield

Case No: 38/1

[ORAL HEARING]

1. This appeal fails. Our decision is that the social security appeal tribunal on 10 June 1985 correctly decided that the decision of the insurance officer dated 6 October 1983 disallowing the claimant's claim for mobility allowance fell to be reviewed by an adjudication officer under section 104(1)(b) of the Social Security Act 1975 and, subject to the condition mentioned in the tribunal's decision, that the decision of the insurance officer should be revised to award mobility allowance to the claimant in accordance with the tribunal's decision.
2. This is an appeal by the chief adjudication officer against the above-mentioned decision of a social security appeal tribunal. The appeal was dealt with along with a claimant's appeal raising related issues (CM 143/1984) by a Tribunal of Commissioners at an oral hearing at which the chief adjudication officer was represented by Mr. P. Milledge of the solicitor's office of the Department of Health and Social Security and the claimant was represented by Mr. R. Drabble instructed by Mr. R. Smith of the Child Poverty Action Group. A copy of our decision in CM 143/1984 accompanies this decision.
3. The claimant in this case made a claim for mobility allowance under the provisions of section 37A of the Social Security Act 1975 which was received by the Secretary of State on 23 February 1983. The claimant suffers from a congenital blood disease affecting her ability to go out of doors without adverse skin reaction. In accordance with statutory provisions now contained in regulation 55(2)(c) of the Social Security (Adjudication) Regulations 1984 (SI 1984 No. 451 the "Adjudication Regulations") the medical questions arising in connection with the claim were referred by the insurance officer to a medical board for determination, following the receipt of a report on the claimant from an examining medical practitioner.

On 12 August 1983 the medical board determined the medical questions adversely to the claimant and on 6 October 1983 the insurance officer disallowed the claim for mobility allowance. On appeal by the claimant the medical questions were referred to a medical appeal tribunal. On 31 January 1985 a medical appeal tribunal decided not to confirm the decision of the medical board. They held that the claimant, although not unable or virtually unable to walk as at the date of her claim, had been unable or virtually unable to walk since 1 June 1984, that the inability to walk was likely to persist for at least 12 months from that date and that the inability was likely to persist until the age of 75. The question of the competency or otherwise of the medical appeal tribunal holding the medical conditions for an award of mobility allowance satisfied from a date later than the date of the receipt of the claim is the subject of our decision in CM 143/1984.

4. On 18 April 1985 the chief adjudication officer referred to a social security appeal tribunal for decision the following questions:-

"(a) whether the decision of the IO dated 6 October 1983 disallowing the claim now falls to be reviewed under section 104(1)(c)(ii) of the Act (as modified by regulation 55(3) of the Adjudication Regulations) in the light of the MAT's decision; and, if so,

(b) whether, on review, the IO's decision should be revised; and, if so,

(c) in what terms, and from what date."

5. After hearing full legal argument a social security appeal tribunal at Sheffield, presided over by a regional chairman, issued a unanimous decision dated 10 June 1985 in which they answered the referred questions as follows:-

"1. The decision of the Insurance Officer dated 6 October 1983, disallowing [the claimant's] claim for mobility allowance, now falls to be reviewed by an Adjudication Officer under s104(1)(b) of the Act, as applied to the determination of mobility allowance questions by regulation 52 of the Social Security (Adjudication) Regulations 1984.

2. If there are no disqualifications under Regulation 8 of the Mobility Allowance Regulations 1975, on review the Insurance Officer's decision should be revised.

3. The revised decision should be:

a. That [the claimant] is entitled to mobility allowance from and including 1 June 1984, the date upon which her circumstances changed so that she became virtually unable to walk;

b. That the allowance is payable from and including Wednesday 6 June 1984, in accordance with Regulation 9(3) of the Mobility Allowance Regulations 1975;

c. That the weekly rate of the allowance is that specified in Schedule 4 Part III paragraph 3A of the Act as being appropriate for the period in respect of which it is paid."

It is contended on behalf of the chief adjudication officer in this appeal that the foregoing decision of the tribunal is erroneous.

6. The social security appeal tribunal gave full reasons for their decision. Having heard the submissions we are of the opinion that the tribunal reached the correct conclusions. We are in the first place of the clear opinion that the adjudication officer was obliged to give effect to the decision of the medical

appeal tribunal in the present case by reviewing and revising his decision refusing mobility allowance. It was not for the adjudication officer to enter into the merits of the medical questions which had been referred to the appropriate adjudicating medical authority or to consider the correctness or otherwise in law of the decision of such medical authority. If he considered that such a decision proceeded upon an error of law the appropriate course would be to request the Secretary of State to apply for leave to appeal to the Commissioner on a question of law, if that had not already been done.

7. We are further of the opinion that the tribunal were correct to reject the proposition that the provisions of section 104(1)(c)(ii) of the Social Security Act 1975, as amended, afforded a ground for review in such a case. Section 104(1) of the Social Security Act 1975, as amended, contains the following provisions:-

"104.-(1) Any decisions under this Act of an adjudication officer may be reviewed at any time by an adjudication officer if -

(a) the officer is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or

(b) there has been any relevant change of circumstances since the decision was given; or

(c) the decision was based on the decision of -

(i)

(ii) either of the disablement questions (section 108) in relation to industrial injuries benefit or severe disablement allowance,

and the decision of that question is revised under section 110 (medical board)."

8. Section 104(1)(c)(ii), as applied to medical questions in mobility allowance cases by regulation 55(3) of the Adjudication Regulations, empowers the adjudication officer to review his decision at any time if it was based on a decision of a medical question which has been revised on review. The provision is clearly necessary to give effect to the review powers of the medical boards under regulation 60 of the Adjudication Regulations. It has no application to decisions reversed or varied on appeal to a medical appeal tribunal. A clear distinction between the respective processes of review and appeal is and has for long been clearly established in social security legislation. Thus for example section 119(1) of the Social Security Act 1975 refers to benefit paid in pursuance of a decision "which is reversed or varied on appeal, or is revised on a review".

9. The tribunal were clearly correct in concluding that the medical appeal tribunal decision in the present case did not represent a ground for review under section 104(1)(c). We accept the conclusion of the tribunal that the provisions of section 104(1)(b) provided an appropriate statutory authority for the adjudication officer's review in the present case. The decision of the medical appeal tribunal on the medical questions referred to them was not a mere medical opinion or piece of medical evidence. It was the decision of an appointed adjudicating authority given on appeal in substitution for the original decision and constituted a relevant change of circumstances occurring after the date of the insurance officer's decision. The decision of the medical appeal tribunal is analogous to the decision of a Commissioner which, it was decided in Decision R(I) 25/63, constituted a relevant change of circumstances justifying a review by an insurance officer. We do not

consider that in paragraph 18 of that decision the learned Chief Commissioner excluded a decision of another of the statutory adjudicating authorities as suggested in paragraph 4(b) of the chief adjudication officer's appeal. In our opinion, he was possibly indicating no more than that the provisions of section 50(1)(a), (b) and (c) of the National Insurance (Industrial Injuries) Act 1946 were not mutually exclusive. In our judgment the decision of the medical appeal tribunal is, like the case of retrospective legislation figured in paragraph 10 of Decision R(G) 3/58, the warrant for a revised decision under section 104(1)(b) having effect from the appropriate earlier date established by that decision, in this case 1 June 1984. It is unnecessary for us in this case to decide whether it would be appropriate to rely on the provisions of section 104(1)(a) in a case where on appeal a medical appeal tribunal has held the medical conditions to have been satisfied from the date of claim.

10. In the result we are satisfied that the social security appeal tribunal reached the correct conclusion in the present case. The appeal of the Chief Adjudication Officer is dismissed.

(Signed) J S Watson
Commissioner

(Signed) J G Mitchell
Commissioner

(Signed) J B Morcom
Commissioner

Date: 12 September 1985