

CS 235/1979

RDS

SOCIAL SECURITY ACTS 1975 TO 1980

CLAIM FOR INVALIDITY BENEFIT

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

Decision C.S. 8/80

1. This is a claimant's appeal from the decision of a local tribunal dated 5 December 1978 firstly confirming the decision of the local insurance officer dated 17 August 1978 in relation to the period 23 to 26 August 1978 and secondly deciding the claimant's claim in respect of the inclusive period 28 August 1978 to 20 November 1978 (referred to the local tribunal by the insurance officer on 2 November 1978) adversely to the claimant. Our decision is that the claimant is not entitled to invalidity benefit for the inclusive period 23 August 1978 to 20 November 1978 because he has not proved that he was, or was deemed to be, incapable of work by reason of some specific disease or bodily or mental disablement; Social Security Act 1975 sections 15(1) and 17(1)(a)(ii) and the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 [S.I. 1975 No. 564] regulation 3 as amended by the Social Security (Unemployment, Sickness and Invalidity Benefit) Amendment Regulations 1978 [S.I. 1978 No. 394] and Social Security Act 1975 section 99 and the Social Security (Claims and Payments) Regulations 1975 [S.I. 1975 No. 560] regulation 11 as amended by the Social Security (Claims and Payments) Amendment (No. 2) Regulations 1977 [S.I. 1977 No. 1444] regulation 2 now repealed but re-enacted in the Social Security (Claims and Payments) Regulations 1979 [S.I. 1979 No. 628] regulation 11. Accordingly the claimant's appeal is dismissed.

2. An oral hearing was directed in this appeal after a further submission was called for by a direction dated 23 July 1980. On 10 October 1980 we held that oral hearing at which the claimant neither appeared nor was represented, but whose solicitors submitted written submissions on his behalf. Mr E O F Stocker of the Department of Health and Social Security appeared for the insurance officer. No oral evidence was called.

3. The Facts and the Merits

The claimant, now aged 46 years, is a shopkeeper. He had been continuously in receipt of invalidity benefit from 19 August 1975 to 22 August 1978, his disability being diagnosed as "cervical spondylosis and osteomalacia".

4. The following medical statements are material to the period in issue in this appeal:-

Med. 3 dated by Doctor	Period	Claim dated by Claimant	Date received
14 August 1978	2 weeks	undated	15 August 1978
28 August 1978	2 weeks	undated	30 August 1978
12 September 1978	2 weeks	undated	13 September 1978
26 September 1978	2 weeks	-/9/78(sic)	28 September 1978
10 October 1978	2 weeks	10/10/78	11 October 1978
24 October 1978	4 weeks	27/10/78	30 October 1978

* 5. Under the normal practice the claimant was examined by a medical officer from the Department of Health and Social Security on 24 July 1978. His opinion was that although the claimant was incapable of his regular occupation, he was capable of work within the limits set out in the report, namely that the claimant was capable of "packing, standing or sitting light-medium jobs".

6. On 3 August 1978 the claimant was asked to visit the Job Centre and the Unemployment Benefit Office to register for employment. He did in fact call at the Unemployment Benefit Office, but refused to register for employment because he "did not feel fit for work".

7. On 17 August 1978 on the claim made on the medical statement dated 14 August 1978 the insurance officer disallowed benefit from 23 to 26 August 1978.

8. The claimant continued to submit the various medical statements detailed in paragraph 4 above. On 24 October 1978 the claimant was examined by another medical officer from the Department of Health and Social Security whose opinion was that the claimant was capable of light shop work, namely supervisory or sales.

9. On 2 November 1978 the insurance officer referred to the local tribunal the question whether the claimant was incapable of work for the inclusive period 28 August 1978 to 20 November 1978 i.e. the period covered by the last 5 medical statements detailed in paragraph 4 above.

10. In order to be entitled to invalidity benefit for the period in issue the claimant must prove that he was incapable, or was

deemed to be incapable, of work by reason of some specific disease or bodily or mental disablement; Social Security Act 1975, sections 15 and 17(1)(a)(ii).

11. Incapacity for work is essentially a question of fact, the burden of proof of which lies on the claimant: Decision R(S) 13/52. A claimant is incapable of work if having regard to his age, education, experience, state of health and other personal factors there is no work or type of work that he can reasonably be expected to do. "Work" means remunerative work, whole-time or part-time. A person's incapacity is judged normally with reference to his regular occupation. But where, as in the present appeal, the claimant's illness is of long duration, the question of incapacity falls to be determined by reference to a wider field of employment than the claimant's regular occupation. The fact that the claimant's past experience and means disincline him from considering certain forms of work does not enable it to be said that he cannot reasonably be expected to do that work if, taking into account the relevant factors, it is a type of work he could do if he were willing to try it.

12. The claimant argues that as his own doctor on 21 November 1978 continued to advise him to refrain from work and on 20 March 1979 an examining medical officer found that the claimant was incapable of work, coupled with the fact that according to the claimant there was no change in his condition between August 1978 and March 1979, he was incapable of work during the period in issue in this case.

13. We reject the claimant's contention. We accept the evidence of the two examining medical officers as to the claimant's capacity for work. The letter dated 24 November 1978 from the claimant's own doctor indicates that the claimant was capable of limited work. To succeed the claimant must show that he was incapable of all work. We therefore find that during the period in issue the claimant was not in fact incapable of all work. Nor is he assisted by the deeming provision. In our view the opinion of the medical officer dated 20 March 1979 does not assist us in coming to a conclusion as to the claimant's capacity for work in August, September, October and November 1978. Subject only to the question of jurisdiction which we deal with below, our judgment is that upon the merits of the case both the insurance officer and the local tribunal came to the correct decisions.

14. Jurisdiction

Decisions in Commissioners' files C.S. 7/1980 and C.S. 387/1980 held that an insurance officer had no jurisdiction to disallow a claim in respect of periods after the date of the claim. In our judgment these cases were wrongly decided on the question of jurisdiction and should not be followed for the reasons set out hereunder.

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15. Section 99 of the Social Security Act 1975 provides

- "(1) An insurance officer to whom a claim or question is submitted under section 98 shall take it into consideration and, so far as practicable, dispose of it in accordance with this section, and with procedure regulations under section 115, within 14 days of its submission to him.
- (2) Subject to section 103 below (reference of special questions), the insurance officer may in the case of any claim or question so submitted to him -
 - (a) decide it in favour of the claimant; or
 - (b) decide it adversely to the claimant; or
 - (c) refer it to a local tribunal.
- (3) ..."

16. Section 99 of the Social Security Act 1975 substantially repeats section 68 of the National Insurance Act 1965. There was no similar provision in the National Insurance Act 1946. Under that Act section 28 required all claims to be made in the prescribed manner and section 43 contained power to make regulations for the determination of all claims and questions. The National Insurance (Determination of Claims and Questions) Regulations 1948 [S.I. 1948 No. 1144] were made under, inter alia, the latter section. Regulation 10(1) was enacted in terms substantially similar to section 99(1). Regulation 10(2) was substantially in the form of section 99(2).

17. The duty cast upon the insurance officer under section 99(1) in respect of a claim submitted to him is to take it into consideration and dispose of it. The taking of a claim into consideration involves its being adjudicated upon and a decision arrived at on the facts and law. Moreover the decision arrived at must dispose of the claim. Mr Stocker conceded that disposal involved a final order being made so far as was practicable. In our judgment a final order necessarily involves the disposal of the entire claim then before the insurance officer, including of course where appropriate, an aspect of a claim; see Social Security Act 1975 section 98(3). It is not permissible under section 99 to make a decision as to part of a claim leaving the remainder of the claim undisposed of. The insurance officer may dispose of a claim by deciding the claim in any of the three ways set out in section 99(2). We need say nothing as to the disposal of the claim by reference of it to a local tribunal. If the insurance officer decides the claim in favour of the claimant, his decision is that the claimant necessarily succeeds in respect of that claim, so that he is awarded benefit or is entitled to a declaration of an industrial accident or otherwise becomes entitled to that which is the subject matter of the

claim. Should he decide the claim adversely to the claimant, his decision is that the claimant is not entitled to benefit or the declaration or to whatever may be the subject matter of the **claim**, with the consequence that the claim is disallowed. What happens when an adverse determination is made is that the claim is disallowed. Once that decision is made nothing more requires to be done. We are satisfied that under section 99 the insurance officer has jurisdiction to decide the entirety of the claim then before him one way or another. We are further satisfied that section 99 confers no jurisdiction to make an award as to part of the claim and leave the remainder undisposed of. We are further satisfied that where an insurance officer decides a claim adversely to the claimant, he must disallow all the claim. He cannot disallow the claim in part and leave the remainder undisposed of and alive as Mr Stocker contended. We are also satisfied that the insurance officer may decide part of the claim in favour of and part adversely to the claimant provided always that the combined effect of the decisions is to dispose of the entire claim which is then before him.

18. The insurance officer's powers under section 99 extend to dealing with prospective claims. We take it as settled law that a claim to benefit in respect of any day subsequent to the date of claim cannot be made unless the Act or Regulations make provision for the making of such a claim: Decision C.S. 174/49(KL); Decision R(S) 1/60 at paragraph 8 and Decision R(S) 2/65 at paragraph 10. The making of forward or prospective claims has been sanctioned in a number of instruments: see the instruments cited at paragraph 5 of Decision R(S) 1/55 and now the regulations made under section 79(3) of the Social Security Act 1975. In our judgment it would be a startling proposition to argue that although regulations permitted the making of a prospective claim, there was no power in the insurance officer to decide such a prospective claim adversely to the claimant. In Decision R(S) 1/55 a Tribunal of Commissioners in fact decided such a prospective claim adversely to the claimant. Decision R(S) 1/55 (which was decided before the existence of section 99 or of section 68 of the 1965 Act) was criticised by Mr Stocker on the basis that the Commissioners "assumed that forward disallowance was permissible even though the National Insurance Act 1946 contained no express power enabling it". In our judgment this criticism is not justified. We accept that the Commissioners did not directly refer to any statutory authority enabling the dismissal of the prospective claim. But in our judgment the Commissioners had jurisdiction to dismiss such a claim under regulation 10 of the National Insurance (Determination of Claims and Questions) Regulations 1948 to which they referred and which together with various amending regulations was in force when Decision R(S) 1/55 was decided. The Commissioners therefore proceeded upon statutory powers which were substantially similar to those now contained in section 99. The 1948 Regulations were of the same effect as if contained in the National Insurance Act 1946 under which they were made, and were to be treated for all purposes of construction or obligation exactly as if they were in the Act: Wicks v Director of Public Prosecutions /1947/ A.C. 362 H.L. In our judgment Decision R(S) 1/55 was correctly decided upon the question

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of jurisdiction. One further criticism was made of the decision ie that the formula "benefit is disallowed from (date) to (date)" should not be used. In our judgment the word "disallowed" always relates to a claim. It would therefore be more appropriate to use the formula "The claim for benefit from (date) to (date) is disallowed" followed by the reason for such adverse determination.

19. The next question for determination is the extent to which section 79(3) and the Regulations made thereunder affect the powers conferred by section 99. Section 79(3) of the Social Security Act 1975 provides

"Regulations may make provision -

- (a) for permitting, in prescribed circumstances, a claim for unemployment benefit, sickness benefit, invalidity benefit, non-contributory invalidity pension or injury benefit to be made, or to be treated as if made, for a period falling partly after the date of the claim;
- (b) for permitting an award on any such claim to be made for a period after the date of the claim of not more than 13 weeks (or such shorter period as the Secretary of State may in any case direct) subject to the condition that the claimant continues during that period to satisfy the requirements for the benefit in question;
- (c) for the review of any such award if those requirements are found not to have been satisfied at some time during the period of the award;
- (d) for the disallowance of a person's claim for unemployment benefit, sickness benefit, invalidity benefit or non-contributory invalidity pension on any grounds to be treated as a disallowance of any further claim by that person for that benefit until the grounds of the original disallowance have ceased to exist."

20. Pursuant to these powers the Social Security (Claims and Payments) Regulations 1975 supra were made. Regulation 11 so far as is material provided

"(1) Subject to the provisions of paragraph (3), where a medical certificate has been issued in respect of the person named thereon ("the claimant") -

- (a) a claim for sickness, invalidity or injury benefit based on the medical certificate shall, unless in any case the Secretary of State otherwise directs, be treated as if made by the claimant for the period specified in that certificate;

- (b) on any such claim the benefit may be awarded or disallowed for the whole or part of that period after the date of the claim but not exceeding 13 weeks or such shorter period as the Secretary of State may in a particular case direct;
- (c) if on any such claim the benefit is awarded or disallowed for part only of the period in respect of which the claim is treated as if made, further decisions in accordance with paragraph 1(b) awarding or disallowing such benefit may be given on the same claim."

21. Consequent upon the proposal to pay with effect from November 1977 non-contributory invalidity pension to certain women the 1975 Regulations were amended by the Social Security (Claims and Payments) Amendment (No. 2) Regulations 1977 supra with effect from 30 August 1977. So far as the said regulation 11(1) was concerned the words set out in square brackets above were deleted and secondly the words "following paragraphs" were substituted for the words "provisions of paragraph 3". The amended provisions with effect from 9 July 1979 are now contained in regulation 11 of the Social Security (Claims and Payments) Regulations 1979 supra.

22. It is not for us to speculate as to the reasons for the amendment of regulation 11 of the 1975 Regulations by the 1977 Regulations. The Report of the National Insurance Advisory Committee (Cmd. 6924) on the amending regulations is curiously uninformative. We are driven to the conclusion that the amendment of regulation 11 is covered by the last sentence of paragraph 2 "The regulations ... also correct minor errors ...". Whatever the reasons for the amendment we are now faced with the construction of regulation 11 in its amended form and with the effect which it has upon an insurance officer's power to decide and dispose of claims, and especially prospective claims.

23. Under regulation 11 as amended the period of the claim based on the medical certificate is, unless the Secretary of State otherwise directs, the period specified in that certificate; regulation 11(1)(a) supra. This may be for a period not exceeding 6 months or if the claimant has on the advice of his doctor refrained from work for at least 6 months and the doctor is of the view that it is necessary for the claimant to refrain from work for the foreseeable future the medical certificate may be for a period "until further notice": Social Security (Medical Evidence) Regulations 1976 S.I. 1976 No. 615. The majority of cases however will be claims up to some finite future date. The date upon which the prospective period of any certificate falls to be determined is the date of claim and no other date: Regulation 11(1)(b) supra.

24. In our view construing section 79 together with the Regulations and section 99, the effect is to permit an insurance officer, provided he is making a favourable decision, to deal with part only of a claim without disposing of the entire claim. The effect is to

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extend section 99 by giving power to make an award for part (as opposed to the whole) of the claim. The power to award is, however, restricted so that the period of benefit so awarded on a prospective claim is limited to 13 weeks. Such a decision, unlike an adverse decision under section 99, does not dispose of the claim. The claim is expressly kept in existence (see regulation 11(1)(c)) and further decisions can be made on the same claim, if necessary by different insurance officers pursuant to section 98(3) of the Social Security Act 1975.

25. In contrast, regulation 11(1) in its amended form gives no power to disallow partially a prospective claim leaving part undisposed of. However this restriction does not debar the insurance officer from disallowing the prospective claim in its entirety under section 99 and so disposing of it. We are unable to construe section 79(3) and the Regulations as operating either expressly or by necessary implication as limiting the powers of an insurance officer to determine adversely to the claimant a prospective claim. Once such a decision is reached the entire claim is disposed of. In short the claim by final order ceases to exist as a claim. No hardship is caused by this; there then exists an appealable decision. Alternatively a fresh claim may be made on a fresh certificate which must be adjudicated upon, **or the original adverse decision may be reviewed and revised where the provisions of section 104 of the Social Security Act 1975 are satisfied.**

26. To summarise. In our judgment

- (1) Section 79(3) and the Regulations confer an additional power on the insurance officer on a prospective claim to decide in favour of the claimant and to deal with part of the claim, leaving the remainder of the claim in existence so that further decisions may be made on it or in respect of it.
- (2) Section 79(3) and the Regulations cut down to a maximum of 13 weeks the period for which the insurance officer in a single decision can award benefit on a prospective claim.
- (3) Section 79(3) and the Regulations confer no power on an insurance officer when deciding a claim adversely to a claimant to deal with part only of that claim and leave the remainder of that claim undisposed of. Where an insurance officer decides such a claim adversely to a claimant, he must give a decision under section 99 which disposes of the entire claim.

27. Conclusions

Turning now to the decisions cited in paragraph 14. The decision in Commissioners' file C.S. 7/1980 gives no reasons for the Commissioner's conclusion that there was no power to disallow

benefit. In so far as that decision relies upon the difference in wording between the 1975 and 1977 Regulations as taking away such power, it overlooks the existence of the powers under section 99. The same observation applies to the decision in Commissioners' file C.S. 387/1980. That decision was given in conditions of urgency. Indeed we are authorised to say by the author of that decision that upon further consideration he considers the decision to be wrongly decided. In our judgment these decisions are wrongly decided and should not be followed.

28. We are satisfied for the reasons set out that the insurance officer and the local tribunal had jurisdiction to make their respective decisions. We have indicated our views on the merits. The claimant's appeal is dismissed.

(Signed) R J A Temple
Chief Commissioner

(Signed) I O Griffiths
Commissioner

(Signed) D G Rice
Commissioner

Date: 30th October 1980

Commissioner's File: C.S. 235/1979
C I O File: I.O. 1280/V/79
Region: Yorks & Humberside