

INVALIDITY BENEFIT

Review on the basis of medical opinions — Procedure on further claims when appeal has been made to the Commissioner — Limit on references to local tribunals.

The claimant's doctor certified on 21 9 76 that the claimant would in his opinion be incapable of work for 13 weeks. Awards of invalidity benefit were made on the basis of this certificate including an award for the period from 5 11 76 to 14 12 76. On 12 10 76 and 5 11 76 medical officers of the Department of Health and Social Security examined the claimant and considered that he was not incapable of his usual occupation. The insurance officer reviewed the decision awarding invalidity benefit from 5 11 76 to 14 12 76 as he considered that there had been a relevant change of circumstances.

The claimant appealed to the local tribunal which adjourned the hearing for a consultant's report to be obtained. On 20 12 76 and 9 3 77 the claimant's doctor gave him certificates advising him to refrain from work and the insurance officer referred the question whether the claimant had proved incapacity for the period from 15 12 76 to 7 6 77 to the local tribunal (in accordance with section 99(2)(c) of the Social Security Act 1975). The local tribunal found that the insurance officer was entitled to review and that the claimant was not incapable of work for the period referred to them.

Held that :-

- (1) Obtaining a different medical opinion is not a change of circumstances for the purpose of review under section 104(1)(b) of the Social Security Act 1975, although it may be evidence of such a change if there is other evidence of it. The onus of proof is upon the insurance officer in all cases of review and he was not entitled to review the decision covering the period 5 11 76 to 14 12 76 under Section 104 (paragraph 3);
- (2) For review under regulation 11(1) of the Social Security (Claims and Payments) Regulations 1975 the onus is upon the insurance officer to show that the requirements for payment have ceased to be satisfied. In themselves medical opinions do not show that these requirements have not been satisfied and the insurance officer was not entitled to review the decision under the regulation (paragraphs 4 and 5);
- (3) Having regard to all the evidence, on balance of probability the claimant was incapable of work from 5 11 76 to 7 6 77 (paragraph 9);
- (4) Decisions on claims and appeals for later periods should not be postponed pending the decision of a Commissioner on an appeal for an earlier period (paragraph 10);
- (5) There should be some sensible limit on further claims referred to a local tribunal who are dealing with an appeal (paragraph 10).

1. My decision is that —

- (a) the decision of the insurance officer awarding invalidity benefit to the claimant for the inclusive period 5 November 1976 to 14 December 1976 may not be reviewed because there has not been a relevant change of circumstances since the decision was given, as provided by section 104(1)(b) of the Social Security Act 1975, and the requirements for payment during that period have not ceased to be satisfied, as provided by regulation 11(2) of the Social Security (Claims and Payments) Regulations 1975, [SI 1975 No 560], as amended. Overpayment of benefit and repayment do not therefore arise;

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- (b) invalidity benefit is payable to the claimant for the inclusive period 15 December 1976 to 7 June 1977 because he has proved that he was incapable of work by reason of some specific disease or bodily or mental disablement as provided by section 17 (1) (a) (ii) of the said Act.

2. The claimant, now aged 56, is a laboratory assistant by occupation. He has received sickness benefit and invalidity benefit for periods since 2 June 1973 for incapacity for work certified by his doctor as being due to conditions of his back. On 23 August 1976, the claimant's doctor certified that, in his opinion, the claimant would be incapable of work for 13 weeks by reason of backache and on 21 September 1976 certified that, in his opinion, the claimant would be incapable of work for 13 weeks by reason of left frozen shoulder. Invalidity benefit was awarded for the period 5 November 1976 to 14 December 1976. On 12 October 1976 and again on 5 November 1976 the claimant was examined by different medical officers of the Department of Health and Social Security, each of whom was of opinion that the claimant was not incapable of his occupation of laboratory assistant.

3. Because of those medical opinions, the local insurance officer reviewed the decision of the insurance officer awarding invalidity benefit for the period 5 November 1976 to 14 December 1976 under section 104 (1)(b) of the Social Security Act 1975 on the ground that there had been a relevant change of circumstances since the decision was given. Merely obtaining a different medical opinion is not a change of circumstances, though it may be evidence of such a change if there is other evidence of it e.g. if a person had resumed work or if a condition had been wholly cured as a matter of medical fact. A medical opinion, or any other opinion, is not a change of circumstances. The onus of proof is upon the insurance officer. (Decision R(I) 1/71, paragraphs 9 to 16). That decision applies to all cases of review. If merely submitting a medical opinion constituted a relevant change of circumstances, there would be no end (other than limitation of time for review) to the number of times the insurance officer and the claimant could present a fresh medical opinion. I do not find that there was a relevant change of circumstances under section 104 (1) (b) of the said Act for review of the decision awarding invalidity benefit for the period stated.

4. In the written submission to the Commissioner on the claimant's appeal, the insurance officer has made no reference to section 104 of the said Act and has not relied upon it as supporting a review of the decision. Instead, he has referred to regulation 11 (1) of the Social Security (Claims and Payments) Regulations 1975, [SI 1975 No 560], as amended, which provides, amongst other matters, that an award may be made of certain benefits, including invalidity benefit, for the whole or part of a period after the date of claim, but not exceeding 13 weeks, when a medical certificate has been issued.

Regulation 11 (2) provides —

- “(2) Any decision awarding benefit by virtue of paragraph (1) shall be subject to the condition that the claimant continues to satisfy the requirements for payment thereof during the period to which the award relates and if those requirements are found not to

have been satisfied at some time during the said period the award shall be reviewed."

5. In my judgment, a further medical opinion that the claimant was not incapable of work may constitute evidence that "the requirements for payment" have not been satisfied thus enabling a decision awarding benefit to be reviewed. In themselves, however, medical opinions are not findings that the requirements for payments have not been satisfied. As the decision awarding benefit was based on the medical certificate, as defined in regulation 11 (5) of the said regulations, the onus of proof is upon the insurance officer to show that "the requirements for payment" have ceased to be satisfied. In my opinion, it has not been proved, on a balance of probability, that "the requirements for payment" ceased to be satisfied for the period sought to be reviewed for reasons which appear later.

6. As regards the period 15 December 1976 to 7 June 1977, the period 15 to 19 December 1976 is covered by the doctor's certificate, dated 21 September 1976, on the previous type of form Med 3 but thereafter the new form Med 3 was used by the claimant's doctor on 20 December 1976 advising the claimant to refrain from work for 13 weeks on a diagnosis of backache and cervical spondylosis. On 9 March 1977 the doctor issued a further certificate on the new form Med 3 advising the claimant to refrain from work for 13 weeks on a diagnosis of spondylosis. The claimant has a life assessment of 30% disablement resulting from various injuries suffered as the result of an industrial accident on 27 September 1972.

7. On appeal by the claimant to the local tribunal, the tribunal adjourned the hearing for two reasons, one being that an independent consultant's report be obtained. Mr Peter Hill, a consultant orthopaedic surgeon, in his report dated 10 May 1977, expressed his opinion that the claimant was incapable of doing his normal work of a laboratory assistant, which was contrary to the opinions of the two examining medical officers. Mr Hill was, however, of the opinion that the claimant was not incapable of some other form of remunerative work which did not involve extensive or repeated bending, lifting, pushing, pulling, climbing or raising his hands high above his head. By contrast, a medical board on 11 May 1976, advised that, in their opinion, the claimant was capable of remunerative employment not requiring binocular vision, prolonged sitting and heavy lifting. Those two medical opinions indicate very restricted forms of remunerative employment for which the claimant was considered capable.

8. Since the decision of the local tribunal, the claimant has again been examined, on 9 September 1977, by a medical officer of the Department of Health and Social Security, who expressed the opinion that the claimant was not incapable of his occupation of laboratory assistant. In a letter, dated 10 February 1978, the claimant has written that he has had further treatment at hospital and further examinations by national insurance medical officers, which have resulted in his being paid invalidity benefit back-dated to 13 September 1977, less the amount which he is supposed to have been overpaid, the subject matter of the decision on review. The insurance officer dealing with the appeal has decided not to

make a further submission on the contents of that letter, which, being uncontradicted, I accept as correct. As a result of my decision any amount deducted as overpayment will of course be repaid to the claimant.

9. In his letter of 10 February 1978, the claimant has referred to his physical conditions and has stated that his injuries have not altered and are still the same as for the period September 1976 to September 1977. As he had been in receipt of benefit for a great deal of the time since February 1975 and as Mr Peter Hill was of opinion that the claimant was incapable of his occupation of laboratory assistant, and having regard to the medical certificates of the claimant's doctor, in my judgment, on a balance of probability, the claimant was incapable of work for the whole of the period from 5 November 1976 to 7 June 1977 and I so find.

10. I deprecate the practice, which I have noticed in another appeal recently, of holding in abeyance an appeal to a local tribunal on a further period of claim and postponing decisions on claims for later periods pending the decision of a Commissioner on an appeal for an earlier period. That does not conform to the provisions of section 99 of the said Act and I have not been referred to any authority justifying such action.

There should also be some sensible limit on further claims referred to a local tribunal who are dealing with an appeal. A person's state of health does not remain static. A claimant's doctor is informed of the result of an examination by a medical officer of the Department, and, if the claimant's doctor continues to issue certificates of further incapacity, it is wrong that a decision should be withheld on the basis that it will depend on a decision on an appeal for a much earlier period. The examinations by the medical officers in this case on 12 October and 5 November 1976 are remote in time and, although they might affect claims made some 2 to 3 months or so after the last examination, depending upon the cause of incapacity and the nature of the illness, it is unrealistic to expect that they have much bearing on claims for sickness benefit or invalidity benefit made after 5 February 1977.

11. The claimant's appeal is allowed.

(Signed) J S Watson
Commissioner

6.9.78

R(S) 7/78
(Tribunal Decision)

NON-CONTRIBUTORY INVALIDITY PENSION

Incapacity for normal household duties as provided for in Section 36(2) of Social Security Act 1975 and regulation 13A of the Social Security (Non-Contributory Invalidity Pension) Regulations 1975 as introduced by force of regulation 2 of the Social Security Non-Contributory Invalidity Pension) Regulations 1977

Following an extensive coronary thrombosis in 1973, the claimant, a housewife, developed angina of effort, as a result of which her ability to perform household duties was restricted.