Scope Of Reg 17(4)

ToIC/GM/T/CH

Commissioners' File: ***CSIS/137/94***
(heard together with: CSIS/134/94 & CSS/035/95)

*25/96

SOCIAL SECURITY ADMINISTRATION ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

Claimant's Name: Charles GORMLEY

Social Security Appeal Tribunal: Glasgow West

Case No: 5/51/94/06901

[ORAL HEARING]

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1. This appeal by the adjudication officer succeeds. The decision of the social security appeal tribunal given on 15 September 1994 was in our judgment erroneous in point of law because it held an adjudication officer's decision reviewing the claimant's income support invalid solely on the ground of a reference to regulation 17(4) of the Social Security (Claims and Payments) Regulations 1987, SI 1987/1968, citing what was said by a Commissioner in an unreported decision, CIS/627/92. Under section 23(7) of the Social Security Administration Act 1992 we set aside the tribunal's decision and refer the case to a differently constituted tribunal for redetermination in accordance with the directions set out below and in the appendix to this decision.

2. By a direction dated 24 November 1995 the Chief Commissioner determined under section 57 of the Act that this and two other cases, CSIS/134/94 and CSS/035/95, were to be decided by a Tribunal of Commissioners. The reason was that this case and CSIS/134/94 raised questions about the scope and effect of regulation 17(4) of the Claims and Payments Regulations and section 25 of the Act in cases where claimants originally accepted as medically incapacitated and drawing income support benefit on that basis had been found capable of limited work. The third case, CSS/035/95, was added so that account could also be taken of any repercussions in similar cases where the claimant was drawing invalidity benefit, the distinction being that a person no longer incapable of suitable work ceases to qualify for invalidity benefit at all, whereas for income support only the amount and conditions of the benefit are affected. Finally, by further direction of the Chief Commissioner on 18 January 1996, we were appointed as the Tribunal to determine all three cases.

3. There were certain interlocutory procedures with which we are not now concerned, save to note that the issues expected to be discussed had been formulated in directions dated 10 August and 1 December 1995. By the second direction an opportunity was also afforded to the Secretary of State to consider whether he wished to be heard in respect of his responsibilities as to possible suspension of benefit pending final determination of such

cases. The Secretary of State did in fact so apply, and appeared at the hearing of the combined appeals; but in the event contented himself with supporting the submissions made to us by the adjudication officers, addressing no submissions to us on any question of the suspension of benefit or how his powers might be affected by our decision. We have to confess that we found this surprising, as the Secretary of State applied to appear as *amicus curiae* and the direction had specifically indicated this as a matter on which we would welcome assistance. However, in light of our conclusions on the main issues this became of less importance.

4. We heard submissions on the cases at an oral hearing on 15 and 16 February 1996. The adjudication officers concerned in all three appeals were represented by Mrs Fiona Reith, Advocate, and the Secretary of State by Mr Gordon Liddell, Advocate, each separately instructed by the Solicitor in Scotland to the Secretary of State for Social Security. The claimants were all represented by Mr Chris Orr of the Strathclyde Regional Council Welfare Rights Department. To all three, but particularly to Mrs Reith on whom the main burden of the argument fell, we are grateful for their help over two full days of oral argument during which many questions and issues were raised and discussed.

5. Each appeal concerned the effectiveness of a review of entitlement carried out following a medical opinion that a claimant receiving benefit under an indefinite award was no longer incapable of suitable work. It was common ground that the reviews purported to have been carried out under regulation 17(4), which provides for awards of benefit made on an indefinite basis to be subject to the condition that the claimant satisfies the requirements for entitlement, and that where those requirements are not satisfied the award shall be reviewed. In this and the other income support case the claimants had been drawing income support and had their awards altered. In the third case the claimant had his invalidity benefit award terminated.

6. The adjudication officer and the Secretary of State founded their submissions on the proposition that regulation 17(4) provides for a separate system of review, independent of the normal powers of review under the Act itself, whose use becomes mandatory in the circumstances it describes. It was said to provide the adjudicating authorities with a quick method of determining an entitlement in the plain case where there can be no question of the claimant any longer qualifying for the benefit at all. For this they relied on the decision of a Tribunal of Commissioners in case R(S)5/89 which had held that regulation 17(4) did indeed provide such an independent avenue for review of awards on the basis of a different medical opinion alone. By doing so they sought to provide relief from, and so over-ruled, R(S)4/86 and other decisions which had held that a normal review, under what is now section 25(1)(b) of the Act, was not open if based solely upon a different medical opinion because *of themselves* such could not establish a relevant change of circumstances. The adjudication officer and the Secretary of State further relied on later decisions of Commissioners suggesting that regulation 17(4) could only apply where the result of the medical findings was that the claimant ceased to satisfy the requirements for benefit altogether, so that its use was appropriate only to such benefits as invalidity benefit and not, at least in the vast majority of cases, for income support.

7. These later decisions along with others, however, have also indicated that the interpretation given to regulation 17(4) by the Tribunal had led to unforeseen complications. Some of these were referred to in the direction of 10 August 1995. In a

helpful submission in response the adjudication officer surveyed how the law had developed after R(S)5/89 and in an appendix drew to attention the more important decisions. It is enough at this stage to state that questions have arisen about the competence of the application of regulation 17(4) to income support, R(S)5/89 having concerned invalidity benefit, (cf. CIS/237/94 with CSIS/92/94) and even in invalidity benefit cases an issue has arisen as to whether a regulation 17(4) "review" could be retrospective (cf. CSS/31/93 and R(S)3/90).

8. The fundamental assumption on which the decision in R(S)5/89 appears to us to have been based was that it was out of the question for a review on a "relevant change of circumstances" under section 25(1)(b) of the Act to follow a medical opinion on capacity for work which differed from an earlier one in relation to the same claimant on the same claim. Before setting out the key passage in that decision we first must explain that for present purposes section 104(1)(b) (of the Social Security Act 1975) reads for the practical purposes of this case in the same terms as section 25(1)(b) of the 1992 Act and regulation 11(2) of the Social Security (Claims and Payments) Regulations, 1979, SI 1979/628 in the same terms and to the same effect as regulation 17(4) of the 1987 Regulations. We must also note that the former regulation had been made under section 79(3)(c) of the Social Security Act 1975, which for the practical purposes of this case read the same as section 5(1)(e) of the 1992 Act.

9. The Tribunal in R(S)5/89 said, under reference to the then legislation: -

> "There was provision in the Act, section 79(3)(c), which enabled regulations to be made for a review of the award if the requirements for benefit were found not to have been satisfied during the period of a forward award. In our judgment the jurisdiction under regulation 11(2) of the Regulations was independent of section 104 of the Act and required review when the requirements for entitlement ceased to be satisfied. The jurisdiction exercised by virtue of the regulation was independent of, but concurrent with and alternative to the power of review under section 104. This was recognised by the Commissioner in R(S)6/78, a review case on the basis of medical opinion. Our conclusion is that the tribunal based its decision on an approach which was erroneous in law, namely that the adjudication officer's jurisdiction under regulation 11(2) was dependent on the requirements of section 104(1) being satisfied. Such is an error of law upon which we set aside the decision."

10. The root of an independent "jurisdiction" to review under the regulation as against the statute's normal jurisdiction thus appears to have been thought to lie in R(S)6/78. In that case the local adjudication officer had proceeded under section 104; the adjudication officer in his submission to the Commissioner, on the claimant's appeal, referred only to regulation 11. Neither seemed to have been making a case one way or the other. Mr Commissioner Watson found neither approach satisfied on the facts which, for either approach, were to be found in competing medical reports made some 3 or 4 months apart. The Commissioner offered no preference between the approaches. But he expressed his decision as being that -

> "...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 1975/560], as amended. Overpayment of benefit and repayment do not therefore arise....."

That suggests to us that the Commissioner was far from viewing the two provisions, or routes, as alternative. It is notable that throughout he limits consideration of any review to section 104.

11. If, then, it be at the least doubtful whether Mr Commissioner Watson was holding or even considering that regulation 11 (1979) created a new review jurisdiction it becomes necessary to consider whether any further foundation for it appears when one looks at how that regulation became translated into the regulation before us. We should first note that "payment" in regulation 11(1979) was replaced by "entitlement" in regulation 17 (1987). However regulation 11 was limited in its application to the forward allowance or disallowance of sickness and invalidity benefit and severe disablement allowance *only*. Regulation 17 of the 1987 Regulations, *per contra*, applies to all benefits and in particular under the Social Security Act, 1986, to income support which that Act introduced, together with those under the other Benefit Acts enumerated in section 84. The result is that regulation 17 appears to be applicable to all benefits provided for under that cumulus of legislation - now of course under the Social Security Contributions and Benefits Act, 1992. However none of the changes in wording or application appear to us to import any intent to establish any new review jurisdiction that did not exist before.

12. Such considerations helped to focus our concern about whether the basic assumption underlying decision R(S)5/89 was in fact correct. We were also concerned that what seemed to us unnecessarily legalistic complications had developed on its back. That in turn has persuaded us that the whole issue required to be looked at again and in depth.

13. We have already mentioned some of the problems and anomalies to which the "independent" construction of regulation 17(4) has given rise. Particular difficulties arise in relation to income support where a view has seemed to emerge that regulation 17(4) could be the authority for review when the issue was concerned with satisfaction of conditions for a disability premium (CSIS/92/94) whereas section 25 was preferred (despite the apparent universality of regulation 17(4)) where the issue was "capability of work" in regard to the exemption from the requirement of being available for work - regulation 8 of, and paragraph 5 of Schedule 1 to, the Income Support (General) Regulations 1987, SI 1987/1967: thus CIS/627A/92. Further doubt arose over whether the adjudication officer's decision requiring the claimant to be available for work or terminating the premiums was "free standing" (e.g. CIS/45/94), or how this fitted with the accepted doctrine of running awards and reviews.

14. Then there was the question of retrospection. In some cases it was held that there could be no retrospective use of the regulation 17(4) route. However a Tribunal of Commissioners in decision CIS/391/92, at paragraph 47(2), appeared to approve the retrospective operation of a regulation 17(4) review without expressly referring to the point; and in his decision in Northern Ireland case C9/94 (IVB) the Chief Commissioner for

Northern Ireland followed that view in construing the parallel, and identically worded, regulation 17(7) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987.

15. Our survey of the authorities has thus persuaded us not only that it is difficult to discern any clear and uniform principle from them on the issue before us, but that attempts to overcome individual anomalies in the system have merely introduced further complications; and that a better solution is to re-think the proposition for which R(S)5/89 has until now stood as authority. We have attempted in the Appendix to this decision to summarise the principles which, in our judgment, should be applied generally in this area from now on.

16. The Appendix sets out our reasons for feeling constrained to differ from the conclusion reached in R(S)5/89. We have not done so without bearing anxiously in mind that decisions of Tribunals carry greater weight than decisions of individual Commissioners and require to be followed in all but the most exceptional circumstances. That follows from the express qualification of a question of law of special difficulty in 57(1) of the Administration Act, formerly section 116 of the Social Security Act, 1975, and R(I) 12/75; and was emphasised in R(U) 4/88. In this case however the issue is essentially one of proper procedure; and we have reached the clear view that the removal of the problems and contradictions which have become apparent in this area since R(S) 5/89 was decided well warrants, under the authority of R(U) 4/88, our deciding to depart from the conclusion reached at that time.

17. Our decision is therefore as stated in paragraph 1 above. The appeal is allowed and the case referred accordingly.

(signed) W M Walker
Commissioner

(signed) D J May
Commissioner

(signed) P L Howell
Commissioner

Date: 17 April 1996

APPENDIX

Commissioner's Files: CSIS/137/94, CSIS/134/94 & CSS/035/95

Reviews of benefit awards and regulation 17(4) of the Claims and Payment Regulations

Introduction

1. Each of these three appeals concerned the review of a running award of benefit for a claimant initially accepted as too ill to work but later found medically capable of suitable work.

2. The tribunals proceeded on the basis that the reviews had been carried out under regulation 17(4) Social Security (Claims and Payments) Regulations 1987 SI 1987/1968, (the "Claims and Payments Regulations") which provides that an award of benefit made in respect of days subsequent to the date of claim is subject to the condition that the claimant satisfies the requirements for entitlement; and that where those requirements are not satisfied the award shall be reviewed.

3. In the first two cases the claimants had been drawing income support and had their awards altered; the adjudication officers appeal against the tribunal decisions that the reviews were ineffective because they were carried out under regulation 17(4). In the third the claimant was drawing invalidity benefit and his award was terminated; he appealed against the tribunal decision that the termination was correct.

4. We were appointed to hear and determine all three appeals, in view of doubts that had arisen from some decided cases about the effectiveness of such reviews and what the correct procedure should be.

The determination process and the principle of finality

5. The rules for review in such cases must be considered as part of the statutory machinery for determining entitlement to benefit under the Social Security Acts.

6. Entitlement to benefit normally arises only on a claim, and it is the making of a claim that starts the determination process: sections 1 and 20 of the Social Security Administration Act 1992. The end of the process is that a claimant who meets the statutory requirements should acquire an indisputable legal right to a defined amount of benefit, no more and no less, out of the money provided by Parliament for social security. Normally the claimant receives this by exchanging a payable order at the Post Office for that exact amount of cash to spend on his or her own needs.

7. To render this right of the claimant (or a decision that on the facts of the claim he or she has no such right) indisputable, it is provided by section 60 that the determination of any claim or question in accordance with the relevant provisions of Part II of the Act (sections 17-59) shall be final.

8. The main method of determining any claim or question under the Act is by administrative adjudication. The three main systems of adjudication at present are general adjudication and disability adjudication, each assigned to adjudication officers under sections 20-21, and medical adjudication, assigned to adjudicating medical practitioners under section 45. The decisions made by these administrative adjudicating authorities are made final and indisputable by section 60, subject to the provisions of Part II of the Act for appeal and review.

Appeal and review

9. ***Appeal*** is the process by which the decision of an administrative adjudicating authority is reconsidered and if necessary set aside or altered by a higher determining authority. Appeals from the decisions of adjudicating officers in general matters lie to social security appeal tribunals under section 22, and from certain decisions in disability matters to disability appeal tribunals under section 33. Appeals from adjudicating medical practitioners in medical matters lie to a medical appeal tribunal under section 46. Although not explicitly stated in the Act, it is well settled that a tribunal appeal involves a complete reconsideration of all relevant issues in the case, from the date of the original claim or question being raised and down so far as necessary to the date of the tribunal hearing itself. Appeal decisions in turn become final and conclusive to determine entitlement in the individual case under the effect of section 60, subject only to the possibility of a further appeal on law, or the provisions of Part II of the Act for review. Appeals from the three sets of tribunals are on points of law only, and go to Commissioners and the higher appellate courts under sections 23, 24, 34 and 48.

10. ***Review*** is the process by which decisions of either adjudicating or higher determining authorities may, in limited circumstances, be reconsidered and if necessary set aside or altered by an administrative adjudicating authority. The power to do this is entirely governed by the Act itself. Such reviews may be carried out under section 25 in defined circumstances in general matters by adjudication officers, or on references from them by social security tribunals; under sections 30-31 in disability matters by adjudication officers, on any ground within a prescribed time limit under section 30(1) and in defined circumstances without time limit under section 30(2)-(5); and under section 47 by adjudicating medical practitioners in the matters reserved for medical adjudication. Decisions given on review under sections 25, 30(1) and 47 are themselves subject to appeal to the relevant tribunal, and thence to the higher judicial authorities, but otherwise also become final under section 60; unless, in turn, they come to be altered by means of a further review should the statutory conditions for this arise. Examples of the statutory conditions are those set out in sections 25(1)(a)-(c), that the decision under review was given on a mistaken basis of fact, that there has been a change of material facts since the decision was given, or that such a change is expected to occur.

Decisions awarding benefit

11. The present cases all concern reviews of awards of benefit. Decisions awarding benefit are all made by adjudication officers, so that it is not necessary to refer further to the provisions for medical adjudication and review. Since many benefits are payable

at different rates and require numerous statutory conditions to be applied to determine the correct entitlement, a decision to award benefit will often involve a number of separate individual determinations of matters such as the level of disability suffered, whether the claimant is capable of doing some kind of work, and in the case of a means tested benefit such as income support, the level of his or her income and capital resources and the various allowable items which in the aggregate make up his or her "applicable amount" for sections 124, 135 Social Security Contributions and Benefits Act 1992: cf. regulation 17 Income Support (General) Regulations 1987, SI 1987/1976 (the "General Regulations").

12. A decision awarding benefit may be made in many different forms according to the circumstances of the individual claimant. Many awards take the form of determining that the claimant is entitled to the benefit at a certain rate from a particular date. The rate may be identified by name, as with the higher and lower rates of disability living allowance; or in income support cases where many different factors affect the rate, the award decision may specify the actual cash amount. For the present purpose it is important to bear in mind that such awards, which are of course needed to give the certainty of entitlement which is the purpose of the whole exercise (see 6 above), may embody a composite determination, that not one but a whole bundle of individual requirements for entitlement are all satisfied together in relation to the claimant.

Advance or continuing awards

13. The vast majority of benefit entitlements relate to more than a single amount on a single day. A person without employment or resources will need income support on a continuing basis until his or her circumstances improve, and a person with a severe disability will need disability living allowance unless or until a cure is found for their condition or it improves spontaneously. Since adjudication of every case on a day by day or week by week basis is obviously quite impracticable, section 5(1)(c)-(e) of the Administration Act authorises provision to be made by regulations for awards of benefit on an advance or continuing basis.

14. An award of benefit may thus be adjudicated on in advance and made so as to commence on some future date, on the assumption that the claimant will satisfy the requirements for entitlement at that date: cf. regulations 13, 13A-13C of the Claims and Payments Regulations. An award may also be made so as to confer the right to get benefit on a continuing basis over a fixed period or indefinitely, on the assumption that the requirements for the entitlement so awarded will continue to be satisfied: section 71(3) Contributions and Benefits Act; regulations 17(1)-(3) Claims and Payments Regulations. Since 1988, this has become the norm; as regulation 17(1) has imposed a rule that except in disability and certain other cases *all* claims for benefit are to be treated as made for an indefinite period, and *all* awards made are to have effect indefinitely.

15. The impact of the rule of finality under section 60 on an award made effective indefinitely under section 5(1)(c)-(d) and regulation 17(1) needs to be considered. Without some limiting provision, the combined effect could be that a claimant correctly awarded an entitlement, say to weekly income support of £x, on the facts and law as

they stood at the time of the award would remain so entitled regardless of circumstances for ever; or at least for so long as the legislation continued to provide for the payment of income support out of money provided by Parliament. Accordingly, section 5(1)(d)-(e) further stipulates that an award having effect under regulations for any period after the date of the claim *must* be subject to the condition that the claimant satisfies the requirements for entitlement when benefit becomes payable under the award; and permits the regulations to provide for a review if those requirements are found not to have been satisfied.

Regulation 17(4)

16. Regulation 17(4), made in exercise of these powers or their statutory predecessors, gives effect to the limiting condition by providing that in any case where benefit is awarded in respect of days subsequent to the date of claim the award shall be subject to the condition that the claimant satisfies the requirements for entitlement; and where those requirements are not satisfied the award shall be reviewed. The suggestion that regulation 17(4) might have been outside the powers conferred by the Act was (rightly we think) not pursued before us.

When it operates

17. In our view regulation 17(4) quite clearly imposes the requirement for review of an award made on a continuing or indefinite basis, *whenever* during the currency of the award it becomes apparent that "the requirements for entitlement" are not, or are no longer, satisfied. We consider what the Commissioner said on this point in R(S)3/94 at paragraph 7 to be correct, and the contrary to be unarguable.

Its function

18. The fundamental question is whether regulation 17(4) provides for its own separate and independent jurisdiction for conducting reviews of entitlement, as held by the Commissioners in R(S)5/89, regardless of whether any other provision for review would also be available in the circumstances.

19. We have reached the conclusion, after a full reconsideration of the statutory provisions and the existing authorities, that this is mistaken, and that the function of regulation 17(4) is limited to making mandatory a review of a future or continuing award under the *normal* review powers, once it appears that the requirements on which the award was based are not, or are no longer, satisfied.

20. The two main purposes, in our view, are to prevent any argument that the adjudicating authorities are disempowered from carrying out a review under the normal provisions by the continuing or indefinite effect of the award itself, e.g. under regulation 17(1); and to make it mandatory for such a review to be carried out before actual payment of benefit can be terminated.

21. The second is at least as important as the first, since otherwise the effect of the first part of regulation 17(4) could be that the right to benefit under the award simply vanished automatically when the condition ceased to be satisfied. This would leave the

claimant's benefit in a state of uncertainty without any obvious mechanism or avenue of appeal for deciding any dispute whether the requirements for entitlement were or were not in fact still met.

22. We can for our part see no reason for going further and holding that regulation 17(4) sets up its own separate machinery for review of previous decisions on entitlement. Though sections 5 and 58 of the Act no doubt empower regulations to do this if necessary, it by no means follows that if a regulation refers to a review it has to be construed as though the powers have in fact been exercised in that way or to that extent.

23. Regulation 17(4) does not purport to set up a separate system of review, and in our view that is not its effect. There is no mention of who is to conduct such a review or of whether or how the review decision may be challenged on appeal, or itself further reviewed should it turn out for example to have proceeded on a mistaken basis; all matters which the normal review provisions cover in detail, and would need to be made clear by an independent review provision if such had been intended.

24. Moreover since regulation 17(4) is not confined to awards within the general adjudication system only, to hold that it created a separate and independent review system would produce the result that in disability cases the use of this separate procedure would be mandatory when the requirements for benefit ceased to be satisfied during the currency of an award, even though this would by-pass the specific provisions of sections 30-35 of the Act for successive reviews and rights of appeal to a disability appeal tribunal, and would leave the claimant without any right of appeal to a tribunal at all, since neither section 22 nor section 33 would apply. We have been left unpersuaded that there is any satisfactory answer to the practical problems and anomalies to which the "independent" construction of regulation 17(4) appears to us to give rise.

25. Nor in our view is there any practical need for attempting to infer that a separate review jurisdiction was intended to be introduced by regulation 17(4) when it contains nothing express to suggest this. If the condition about the "requirements for entitlement" on which the relevant award is based turns out not to be satisfied (either at the starting date of an award or subsequently), then the award itself is bound *either* to have been based on a mistake of fact or law, *or* to depend on the continuance of circumstances which have materially changed. In particular we are unable to see how the requirements for entitlement under an award, having initially been satisfied, could cease to be so without this also representing a relevant change of circumstances within the normal provisions for review. All the relevant possibilities appear to us already to be covered by sections 25, 30 and 31, which expressly allow for regulations that require a mandatory review without anyone applying for it, specify clearly who is to conduct the review, and provide for proper rights of appeal and further review where necessary.

Conclusions on how regulation 17(4) relates to sections 25, 30 and 31

26. For the reasons just given, we reach the clear conclusion that regulation 17(4) creates no separate review jurisdiction that can operate independently of sections 25,

30 and 31, and that in every case where the regulation applies it does so by making a review mandatory under whichever of the normal provisions is appropriate.

27. It follows that we have to conclude that the decision of the Tribunal of Commissioners in case R(S)5/89 on a similar point on earlier regulations was, insofar as contrary to our own decision, wrongly decided. This and later decisions to the like effect should no longer be followed in cases involving regulation 17(4).

28. We differ with great reluctance from three such experienced Commissioners, but their decision does not go into the reasons for their conclusion beyond pointing to the width of the enabling statute, which as noted in paragraph 22 above is not by itself a sufficient ground for interpreting the regulations as doing more than they need or purport to do.

Medical opinions and change of circumstances

29. It is a well established principle that a medical opinion which differs from a previous one does not by itself amount to a "relevant change of circumstances" for the purposes of a review. Nevertheless the findings of an up-to-date medical examination and report may well be evidence of an *actual* change of circumstances to justify a review, such as an improvement in the claimant's condition since the original award, or there being by now some work it is reasonable to expect him or her to do. Thus, in over-ruling R(S)4/86 the Tribunal in R(S)5/89 appear to have been more concerned with the difficulty perceived from the former and not enough with the solution offered in practice by the latter.

30. The Commissioner in case CIS/856/94 paragraph 10 appears to us to state the correct principles on this point, and statements in earlier cases suggesting that an up-to-date medical opinion may justify a review under regulation 17(4) even without a relevant change of circumstances should be read in the light of what is said there and in paragraph 25 above.

References to "reviews under regulation 17(4)"

31. Since regulation 17(4) is not a separate system of review but a provision for invoking the normal systems for review found elsewhere, a review conducted because the events specified in regulation 17(4) have arisen cannot be invalid on the sole ground that the adjudication officer conducting it (and still less a presenting officer on a subsequent appeal before a tribunal) happens to refer to regulation 17(4) as the authority for it.

32. In all cases, the substance of what the adjudicating officer was deciding and the questions to which he was addressing his mind must be considered in determining whether his statutory powers have or have not been correctly exercised. It will always be better to place things beyond doubt by referring to the provision that confers the relevant power, for example section 25(1)(b), as well as to regulation 17(4) as the occasion for using it; and going on to identify the facts relied on as giving rise to a relevant change of circumstances. But if the reality is clear, the omission of a

particular form of words or of a particular statutory reference does not by itself invalidate an otherwise correct review.

No special rule against retrospective review

33. It also follows that there is no difference between a review required by regulation 17(4) and any other review as regards the period over which the benefit entitlement can be revised. How far any revision can or should have effect for any period before the date of the review itself must always depend on the reasons for the review and the facts of the case, but there is no special rule applying to cases within regulation 17(4).

34. The suggestions in, e.g., CIS/413/92 and CSIS/92/94 that there is some special rule for such cases introduce what in our view is an unnecessary and unwarranted complication. If for example if it becomes apparent that a claimant ceased to qualify for benefit a long time ago but has continued to draw it under a continuing award on the basis of false medical certificates, there ought to be a review back to the date when he actually ceased to qualify and we can see no reason for regulation 17(4) to prevent this.

Review and revision

35. In our judgment the process of a review, in all the provisions we have been considering, involves *both* reconsidering all material aspects of a claimant's case *and* redetermining any question needed to decide his or her correct entitlement. We see no reason for restricting its meaning to one or the other, as sometimes suggested (see, e.g., R(S)3/94). The word "review" can have a varying meaning according to the context, so that a review of the Navy can mean either a ceremonial inspection of the fleet or a reassessment and a cut in its numbers. However any parent knows that a commitment to a review of pocket money at a particular birthday involves not only a reconsideration of the amount but also the making of a suitable adjustment to reflect the new circumstances and status. It is in this extended sense that the word appears in Part II of the Act.

36. The need to consider a review may arise on an application under sections 25, 30 or 31, or because an officer of the department considers the condition in regulation 17(4) has arisen and in the course of his duties refers the matter to an adjudication officer. In either case, it falls to the adjudication officer (1) to determine whether the conditions to warrant or require a review are shown to have been met; and if so (2) to proceed to conduct it, by (a) reconsidering the material aspects of the case and (b) making any redetermination needed in the light of the reconsideration. The adjudication officer must be affirmatively satisfied that the occasion for a review has in fact arisen before conducting it; and a tribunal too must be similarly satisfied before they can uphold it or give their own determination in its place.

37. We can see nothing wrong in the same adjudication officer who determined whether the occasion for a review has arisen going on to conduct it at once if the answer is yes, or in the two decisions being recorded and notified to the claimant in a

single document. Either or both aspects can be appealed, and if the adjudication officer is wrong on the first question, his decision on the second is simply ineffective.

Meaning of "the requirements for entitlement" in regulation 17(4)

38. A review of a continuing award becomes mandatory under regulation 17(4) only when "the requirements for entitlement" are not satisfied. The key to understanding these words is in our view to read them together with the first part of the regulation which makes every future or continuing award of benefit a conditional one, and to bear in mind the nature and purpose of such awards as we have sought to explain it above.

39. At any one time, a claimant receiving a benefit will have only one award of that benefit in force. It is that award that will alone define his or her current entitlement, even though this may well represent the product of a large number of separate determinations on individual conditions or requirements, made either on the same occasion as each other or at intervals over time as circumstances have changed. It is the claimant's award as currently constituted and in force to which regulation 17(4) refers.

40. In this context, "the requirements for entitlement" must in our view mean, and mean only, the totality of the requirements attaching to the individual claimant's entitlement under the award as currently in force. If that totality ceases to exist, even though only one element in it ceases to apply to the claimant, then the basis on which he or she has been given an indefinite legal right to payment of benefit at the rate awarded has materially changed. A review is needed to see what effect this has on the entitlement, and to adjust or terminate it to reflect the change.

41. We can thus see no justification for construing the "requirements for entitlement" in regulation 17(4) as meaning anything other than the actual requirements on which the particular award being considered depends. Whether regulation 17(4) triggers a review in an individual case must depend on the terms of the claimant's current award of benefit and the aggregate of the requirements on which this is based. Since an award is a single award even though it may depend on a number of requirements all being satisfied at once, the effect of the regulation is to trigger the need for a review once *any* of them ceases to be met, rather than only when all of them do.

42. As the Commissioner points out in case CSIS/92/94 paragraph 9, regulation 17(4) is not stated to operate only when entitlement to benefit has to be extinguished altogether, and we see no reason so to restrict it. The views expressed to the contrary in unreported decisions in cases CIS/627A/92, CIS/251/93, CIS/045/94, CIS/856/94 and others to the like effect are in our view incorrect and should not be followed. If a claimant's circumstances change so that he or she no longer meets the requirements for the award of benefit currently being received, it should be reviewed, whether the benefit awarded has only to be adjusted, or stopped altogether. This in our view is what regulation 17(4) provides.

Consequences of a claimant being found capable of work

43. Accordingly, if a claimant drawing benefit under an award based on medical incapacity for work is pronounced fit on a further medical examination, the requirements on which his continuing award was based have to be considered to see whether an occasion for reviewing it has arisen. As noted above the up-to-date medical opinion is not itself that occasion, but is evidence of something that may well be, namely that there is now some type of work the claimant can be expected to do whereas this was not so before. For a claimant drawing invalidity benefit this factual change, if established, causes regulation 17(4) to trigger an immediate review since it is fatal to the award.

44. For an income support claimant the position is more complex, as the question of incapacity for work affects not only the right to an award by reference to an applicable amount that may include a disability premium, but also whether the normal condition of being available for work applies to the entire benefit: regulation 8 and Schedule 1, paragraph 5 of the General Regulations.

When review is triggered in income support cases

45. As rightly pointed out in the decisions referred to in paragraph 42 above, the mere fact of becoming fit again does not mean that the claimant necessarily ceases to qualify for the whole benefit. The operation of regulation 17(4) is not triggered on *that* ground, because incapacity is not a basic requirement for income support. Ceasing to be incapable of work does not mean ceasing to qualify altogether for income support as the claimant can simply sign on and make himself available for work at once: cf. CIS/783/94. A review *is* however required by regulation 17(4), as soon as the conditions attached to the disability premium cease to be met. From then on, the claimant no longer satisfies the requirements for entitlement under his particular award, and it needs to be reviewed and recalculated.

46. The point at which this occurs in a given case depends on the facts and on the conditions in paragraph 5 of Schedule 1 to the Income Support Regulations as they apply to the claimant. These conditions have taken no less than four different forms since income support was introduced on 11 April 1988. From 10 April 1989 to 30 March 1994 they depended on whether an adjudication officer had yet made a *determination* that the claimant was fit for work, rather than the underlying *reality* of his fitness or otherwise; but this in our view makes no difference in principle to how regulation 17(4) operates. In each case, the question is whether the terms of entitlement currently applying to the award are any longer satisfied, and if not the appropriate procedure is that of a review.

Correct approach in invalidity and income support cases

47. Tribunals should accordingly approach disputed review decisions in such cases as follows.

(1) Decisions of adjudication officers should not be held invalid solely on the ground of a reference to regulation 17(4), without any further consideration of whether the conditions of requiring a review of the claimant's entitlement had in fact arisen, whether the adjudication officer's decision was correct in substance even if defective in form, or whether the tribunal should exercise the jurisdiction we consider they have on an appeal to conduct or perfect any review of the claimant's entitlement themselves.

(2) The tribunal should determine first whether it has been shown to their satisfaction that the claimant was at the date of the review no longer incapable of suitable work, by the relevant test (R(S)3/90, R(S)11/51 paragraph 5, R(S)2/78). If the answer is no, they should set aside the adjudication officer's decision on this question and hold the purported review ineffective as the ground for it had not in fact arisen. If the answer is yes, they should check the terms of the current award to confirm that it was based on an assumption of continuing incapacity, so that the change in the claimant's condition represents a change of circumstances to justify a review. They should then consider whether the review has in fact been carried out properly.

(3) The correct course on review in such circumstances, assuming no other grounds for it, is in an invalidity benefit case to terminate the award; and in an income support case to recalculate and adjust the award to reflect an applicable amount that excludes the disability premium, and determine that from the relevant date the claimant is no longer exempt from the condition of availability for work on the ground of incapacity.

(4) It is not correct, except perhaps in rare cases such as that of a fraudulent claimant where a retrospective review may be justified, for the claimant's entire entitlement to income support to be stopped at once without allowing a chance to comply with the condition (CIS/856/94 paragraph 7, CIS/783/94 paragraphs 7-8). Nor should the claimant be required to make a fresh claim for the benefit if all that needs doing is to adjust the award on the original claim to reflect the changed circumstances.

(5) If the review has not been correctly carried out, the tribunal should consider whether they have adequate material to reconsider and redetermine the award themselves, and if possible do so: CIS/251/93 paragraph 5, CIS/856/94 paragraph 11. They should also, so far as possible, determine any question of the need for any later review of the award down to the date of their own decision, and if necessary conduct it themselves, so as to bring finality to the case.