

April 1994 Case No. - max is not a
'Reserve Retirement'

RAS/SH/1

THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CDLA/881/1994

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

APPEAL FROM DECISION OF A DISABILITY APPEAL TRIBUNAL ON A
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

MR COMMISSIONER R A SANDERS

Claimant : Norman Stebbing
Tribunal : Manchester
Tribunal Case No : D/21/021/93/0935

1. The only matter left in issue following the interim decision given on 9 March 1998 (which awarded, by consent, the middle rate of the care component of disability living allowance from 14 October 1994 for life) is whether there is any earlier entitlement.

2. The reason that the interim decision commenced entitlement from 14 October 1994 is that that was the date of the Commissioner's decision in the Fairey case and the adjudication officer accepted that, applying section 69 of the Social Security Administration Act 1992, there was entitlement at least from that date. The question of earlier entitlement was left over because at that time the case of Woods was pending in the Court of Appeal and that case had a direct bearing on whether section 69 applied when, as in this case, the request for the review was made before the decision which would be a "relevant determination" or test case for the purposes of section 69 if that provision applied. In the event the appeal in the Woods case was withdrawn by the Chief Adjudication Officer leaving the Commissioner's decision in that case to stand; the Commissioner, as is well known, had decided that section 69 did not apply if the request for review was made before the test case had been decided.

3. However, that is not the end of the matter in this case because the adjudication officer now submits that -

"4. In CDLA/577/94 [Woods] decided on 27.6.96 the Commissioner held that where the date of the review request is made before the date of a relevant determination there will be no restriction on the payment of any arrears of benefit. This view was confirmed by the Court of Appeal on 12.12.97. I respectfully submit CDLA/557/94 is itself a 'relevant determination' within the terms of Section 69 of the Administration Act. It is my submission that the reinterpretation of the law in Woods can only apply to benefit other cases where the application for review is made after 27.6.96.

5. In the present case the application for review was made on 24 August 1992 I therefore submit the claimant cannot take advantage of the reinterpretation of the law made on 27.6.96. If the Commissioner accepts my submission I respectfully submit he should confirm his interim decision that the claimant is entitled to the middle rate care component from 14.10.94 only."

Such a submission was rejected by the Commissioner in CIS/8074/95.

4. The Commissioner, in that case, said (paragraph 10) -

"10. On that question, the adjudication officer refers, again properly, to another decision of mine,

CDLA/577/1994. In that decision, given on 27 June 1996, I held that section 69 did not apply where the review under which the revision was carried out was applied for before the relevant determination. My decision was upheld by the Court of Appeal in Chief Adjudication Officer v Woods (12 December 1997). Applying that ruling to the present case would mean that section 69 does not apply. The adjudication officer has submitted that 'CDLA/577/94 is itself a relevant determination within the meaning of section 69 and its effect is therefore limited to reviews requested on or after' its date, so that it cannot assist the claimant. That submission cannot be accepted. It treats section 69 as if it expressed some general principle about the legal effect of decisions by the Commissioners and the courts, instead of a narrow and carefully defined exception from the general principle. The general principle is that a decision of the Commissioner, like the decision of a court, on a point of law states what the law has always been, since whatever was the source of the law became operative. The adjudication officer's submissions must entail the argument that in the present case the adjudication officer's decision of 20 December 1994 would, in the absence of the effect of section 69(2), fall to be revised on review in favour of the claimant immediately from 7 November 1994 not only in consequence of CIS/472/1994, but also in consequence of CDLA/577/1994. In my judgment, that is not the case. The decision would fall to be revised in consequence of CIS/472/1994 and of the general principle which I have stated. It would not fall to be revised in consequence of CDLA/577/1994 as a decision on the scope of the exception from that general principle made by section 69 itself. There also seems to me to be some logical difficulty in using section 69 to avoid applying CDLA/577/1994 in circumstances which CDLA/577/1994 itself decides are free of the restrictions of section 69."

I agree with that analysis and I too reject the adjudication officer's submission.

5. The request for the review in this case was made on 12 May 1994. The tribunal made it quite clear that they gave entitlement because of Fairey. Now if, as I hold, that case is not a relevant determination for the purposes of section 69 it follows that the claimant, whose condition has been constant for many years, is entitled, pursuant to regulation 65 of the Social Security (Adjudication) Regulations 1986 (in force at the material time), to the care component at the middle rate for three months prior to the date of the request for the review. My further decision in this case is that the claimant is entitled to the care component at that rate from 24 May 1992 to 13 October 1994.

Entitlement since then is, as I have said, dealt with in my interim decision.

(Signed) R A Sanders
Commissioner

(Date) 26 October 1998