

MR

*Reading Commission - to Commission May 30 1996
At a meeting held on 15/1/96. Adv. S. 69/94
Commissioner's File: CDLA/14895/1996
Social Security Contributions and Benefits Act 1992
Social Security Administration Act 1992*

APPEAL TO A SOCIAL SECURITY COMMISSIONER FROM A DECISION OF A DISABILITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is an appeal by the claimant brought with my leave against a decision of the Reading disability appeal tribunal dated 15 January 1996 whereby they awarded the higher rate of the mobility component and the highest rate of the care component of disability living allowance from 7 April 1995 to 6 April 1998. Not surprisingly, the issue on the appeal is not the amount of the award but the date from which the award should have been made.

2. The claimant had been in receipt of the lower rate of the care component since 1992. Initially there had been an award from 6 April 1992 to 5 April 1994 and then there had been a further award for a further year. Her current award was therefore due to expire on 5 April 1995 when she made a renewal claim on 8 November 1994. The adjudication officer rejected the renewal claim altogether on 19 January 1995 and that decision was confirmed on review on 22 March 1995. The tribunal allowed the appeal but did not consider any period before the renewal date of 7 April 1995. (I am not sure what happened to 6 April 1995 but its disappearance probably has something to do with the day of the week on which payments are made.) The tribunal were not informed of the date of the renewal claim but it should have been clear to them that it was before 19 January 1995 and therefore during the period when a previous award of disability living allowance was still running.

3. Section 30(12) of the Social Security Administration Act 1992 provides:-
"Except in prescribed circumstances, where a claim for a disability living allowance in respect of a person already awarded such an allowance by an adjudication officer is made or treated as made during a period for which she has been awarded the allowance, it shall be treated as an application for review under this section."

Regulation 13C of the Social Security (Claims and Payments) Regulations 1987 provides:-

- "(1) A person entitled to an award of disability living allowance may make a further claim for disability living allowance during the period of 6 months immediately before the existing award expires.
- (2) Where a person makes a claim in accordance with paragraph (1) the adjudicating authority may -

- (a) treat the claim as if made on the first day after the expiry of the existing award ('the renewal date'); and
 - (b) award benefit accordingly, subject to the condition that the person satisfies the requirement for entitlement on the renewal date.
- (3) An award under paragraph (2)(b) shall be reviewed by the adjudicating authority if the requirements for entitlement are found not to have been satisfied on the renewal date."

4. It is to be noted that regulation 13C(2) gives an adjudication officer a mere power to treat a claim as made on "the renewal date" and does not impose a duty to do so. It seems to me that, where an adjudication officer (or, on appeal, a tribunal) is minded to award a component of disability living allowance on the renewal claim at a higher rate than on the earlier award, it is incumbent on him or her (or them) to consider first whether the renewal claim ought to be treated as a claim made on the date it was received (or such other date as might be appropriate under regulation 6 of the 1987 Regulations), in which case section 30(12) of the 1992 Act would apply to treat it as an application for review made on that date and the question would be whether there were grounds for review of the existing award. A review may, of course, be effective in respect of a period before the date of application by virtue of regulation 59 of the Social Security (Adjudication) Regulations 1995 (formerly regulation 65 of the 1986 Regulations). Section 30(12) of the 1992 Act clearly contemplates a claimant erroneously making a claim when an application for review would be more appropriate. It would be absurd if regulation 13C of the 1987 Regulations were to apply so as to deprive a claimant of the advantage of section 30(12) of the Act. Accordingly, it is my view that it is only if there are no grounds for reviewing the existing award that regulation 13C(2) should be applied to treat a renewal claim as having been made only on the renewal date.

5. In the present case, the adjudication officer concedes that the tribunal failed to consider whether there were grounds for review of either of the earlier awards of disability living allowance and, in my view, they thereby erred in law. The evidence clearly raised that question. I therefore allow the claimant's appeal. I set aside the decision of the Reading disability appeal tribunal dated 15 January 1996 and I refer the case to a differently constituted tribunal for determination.

6. The last tribunal mentioned the fact that no documents relating to the previous awards of disability living allowance were in the papers before them. The tribunal ought really to have had that evidence even if they were to deal with the case purely as a renewal claim. It was clearly essential that they should have had it if they were to consider whether there were grounds for review of those awards. The adjudication officer must make it available to the tribunal to whom I now refer the case.

M. ROWLAND
Commissioner
28 July 1997