

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the Liverpool appeal tribunal, held on 13 June 2003 under reference U/06/079/2003/00460, is not erroneous in point of law.

The appeal to the Commissioner

2. This is an appeal to a Commissioner against the decision of the appeal tribunal brought by the claimant with the leave of a district chairman of tribunals. The Secretary of State does not support the appeal.
3. Case management directions were given by Mr Commissioner Rowland. The case has been transferred to me for decision.

History - 1

4. The relevant history begins with a 'renewal' claim for a disability living allowance in 1999. The effective date of the renewal was the claimant's 14th birthday, 26 July 1999. The basis for the claim was the claimant's diabetes, specifically his difficulties coping with hypoglycaemic attacks and monitoring his blood sugar levels.
5. An adjudication officer decided to award a disability living allowance consisting of the care component at the middle rate for the inclusive period from 26 July 1999 to 25 July 2001. The latter date was the day before the claimant's 16th birthday and the date when the age qualifying conditions would last apply to him.
6. The form in which the decision was put into the Department's computer and was notified to the claimant was as an award for life.

Analysis - 1

7. At the time, an award only had authority by virtue of being made by an adjudication officer. That award was as recorded on page 50 and was for a period of 2 years only. The fact that it was recorded differently on the computer or notified differently to the claimant did not matter. Those mistakes could not change the decision made by the adjudication officer.
8. As to the recording on the computer, this was a purely administrative arrangement internal to the Department of Social Security. It required no legislative authority and had no possible impact on the decision that had been made. The tribunal referred to this as an 'official error'. That was an appropriate description. That expression refers to mistakes in adjudication decisions or ones that affect those decisions. It does not refer to purely administrative mistakes that have no impact on the adjudication decisions that are made.
9. As to the notification to the claimant, this was required by law. But the provisions governing it were separate from those that govern the making of the award: see regulation 18 of the Social Security (Adjudication) Regulations 1995 in force at the time. And notification was a task allocated to the Secretary of State, not to an adjudication officer. A defective notification cannot alter the terms of the award.

History - 2

10. As a result of the mistake in the computer record, the claimant continued to be paid a disability living allowance past the end date fixed by the adjudication officer. It was only when he was selected for a periodic check that the mistake came to light.

Analysis – 2

11. By the time that the mistake was discovered, the status of adjudication officer had been abolished and decision-making had been transferred into the name of the Secretary of State.

12. The payment of benefit was made without statutory authority. There was no decision that had to be revised or superseded before payment could be stopped. It could be stopped as an administrative action of the Secretary of State. Adjudicative action was not needed.

13. The benefit that had been paid could not be recovered under the social security recovery provisions in section 71 of the Social Security Administration Act 1992, because the overpayment was entirely the fault of the Secretary of State. It might be recoverable in the courts as money paid under a mistake of fact. But that is a theoretical possibility only. The Secretary of State is most unlikely to pursue an action on that basis, if for no other reason than that the costs might exceed the amount recovered.

History – 3

14. When the mistake was discovered, the correct terms of the adjudication officer's award were notified to the claimant. That was done in a letter of 11 September 2002

Analysis – 3

15. What was the effect of the inaccurate notification on the claimant's right of appeal?

16. The claimant did not challenge the content of his award. But if the claimant had been properly notified of the length of his award, he might have exercised his right of appeal in respect of that period. It is doubtful whether this would have been successful, because the use of a claimant's 16th birthday is a standard and sensible end date, as it marks the point at which the age qualifications conditions apply. That makes it a suitable time at which to reassess entitlement to disability living allowance.

17. The time for appealing begins with the notification of the decision. That was so under the terms of the legislation at the time (Schedule 2 to the Social Security (Adjudication) Regulations 1995) and the terms of the legislation now in force regulation 31 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999). That must mean when the decision is correctly notified. It is only then that the right of appeal can be exercised effectively. That interpretation is consistent with the evident purpose of the notification requirement. So, the right of appeal against the adjudication officer's decision in 1999 did not arise until that decision was properly notified in the letter of 11 September 2002.

History – 4

18. The claimant completed a claim pack in October 2002.

19. The Secretary of State treated that pack as both an application to revise or supersede the decision making the award on the 1999 'renewal' claim and as a new claim. The application was refused; the new claim was treated as made on 8 October 2002 and was refused.

Analysis – 4

20. Commissioners have said for half a century that claimants are not to be prejudiced by their ignorance of the adjudication procedures. The Secretary of State's decision to treat the claim pack as both an application and a claim was appropriate under that approach. That led to two decisions. The claimant exercised his right of appeal against both and the tribunal properly considered both.

The tribunal's decision and the grounds of appeal

21. The tribunal's decision is defective in respect of dates. The chairman's full statement of the tribunal's decision repeatedly refers to the adjudication officer's award as ending in May 2001, not as was the case July 2001. It also contains at least one error on the date when a decision was made in 2003. But these are matters of detail that do not affect the substance of the tribunal's reasoning. I am sure they do not reflect confusion by the tribunal. They are merely instances of inattention by the chairman when drafting the statement.

22. The tribunal's decision was also defective in respect of its reference to official error. However, that did not affect the outcome, because the tribunal correctly concluded that the Secretary of State did not need an adjudicative decision to terminate payment once the period of the award, as made by the adjudication officer, had come to an end.

23. The tribunal's decision was also defective in treating the adjudication officer's decision as notified in 1999 and not, as I have decided in 2002. But the tribunal nonetheless dealt with the points made by the claimant's representative in respect of the decision. It is correct that on the tribunal's own reasoning, an appeal against the decision was late. But it nonetheless proceeded to deal with the issues raised. So, the claimant was not prejudiced by this mistake.

24. The claimant's representative has also criticised the tribunal on its findings of fact and the chairman's explanation of those findings. As Mr Commissioner Rowland commented when giving case management directions, the remarks selected by the claimant's representative have to be read in their context. I agree with, and adopt, the Secretary of State's analysis that the tribunal was entitled to make the findings that it did. The chairman's explanation is adequate.

25. Although I do not base my decision on this, I notice that the evidence showed that the claimant drove a car and had undertaken rock climbing. The latter may have been supervised to the extent that the claimant was not at risk. But someone who drives a car has a difficult task in proving the need for supervision on the basis of unpredictable hypoglycaemic attacks that come on without warning.

Conclusion

26. In summary, the tribunal had before it appeals against (i) the 1999 decision, (ii) the refusal to revise that decision as to its period and (iii) the refusal of the 2002 claim. The

tribunal's reasoning deals in substance with all issues raised in respect of those appeals. On the facts, the tribunal was entitled to come to the conclusions that it did. I dismiss the appeal.

Signed on original

**Edward Jacobs
Commissioner
15 December 2003**