

MAT Summary Review Whether Claimant
Can Obtain Pension to Marine

OFFICE

ATH/PAH/4

Commissioner's File: CI/510/1994

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR DISABLEMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow this appeal by the claimant. The decision of the medical appeal tribunal (MAT) dated 29 May 1994 was erroneous in law and I set it aside. The case must be reheard and redetermined by a differently constituted MAT.

2. This is an appeal against the decision of the MAT dated 24 May 1994 whereby they decided to confirm the decision of the adjudicating medical authority and decided that at no time since 13 September 1993 had the claimant suffered from Prescribed Disease No. D12 or from a sequela of that disease. The claimant appeals with leave of the Chief Commissioner.

3. The claimant is a retired coal miner. He was born in 1926. On 8 September 1993 he made a claim for disablement benefit for Prescribed Disease No. D12. On 26 January 1994 a specially qualified adjudicating medical practitioner as adjudicating medical authority decided that he was not suffering from that disease. The claimant appealed against that decision.

4. Prescribed Disease No. D12 is defined as chronic bronchitis or emphysema or both, where there is accompanying evidence of

(i) coal dust retention demonstrated by a chest radiograph
or

(ii) a force expiratory volume in one second at least one litre below the prescribed mean value.

5. In their findings of fact the MAT stated that they had examined his x-rays and confirmed they were category 1. They accepted that he had worked in the mines for in excess of 20 years and that he suffered from bronchitis. They continued:

"However, the FEV1 drop is 0.33 litres. He does not therefore meet the criteria for PD D12."

6. At the hearing before the MAT, according to the chairman's note of evidence, the claimant, in answer to a question by a medical member, Dr Lewis, gave details of the medication he was taking, but the chairman's note does not state or indicate what medication the claimant had taken before the hearing. According to the submission dated 31 October 1994 on behalf of the Secretary of State, paragraph 10, medical advice obtained by the Secretary of State was that it was not the policy to ask claimants to withhold treatment before being seen by the medical adjudicating authorities, but that claimants should be asked if they had taken any treatment, and if they had taken any, account would be taken of that medication when conducting their medical examination.

7. The MAT failed to make any finding of fact as to whether or not the claimant had taken any, and if so what, treatment before the hearing. It is not clear, therefore, whether or not they took account of any treatment taken before the hearing when making their examination. In those circumstances their decision failed to comply with the requirements of Regulation 31(4) of the Adjudication Regulations and was erroneous in law.

8. Accordingly, I allow the appeal.

(Signed) A.T. Hoolahan
Commissioner
(Date) 29 April 1993