

CN 33/1981

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SOCIAL SECURITY ACTS 1975 TO 1981

REFERENCE FROM MEDICAL APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

Name: Susan Christine Cooper (Mrs)

Medical Appeal Tribunal: London West

Original Decision Case No: 28/2/81

[ORAL HEARING]

1. This is one of four references in similar terms by a medical appeal tribunal on a question of law under regulation 28 of the Social Security (Determination of Claims and Questions) Regulations 1975. The questions submitted in this case are -

1. Whether a decision of an insurance officer awarding mobility allowance for a limited period based on and in accordance with a medical report properly obtained on his behalf is a decision which is adverse to a claimant thereby entitling the claimant to appeal to a medical board by virtue of regulation 16 of the Mobility Allowance Regulations 1975.
2. If the answer to the above question is "No" but nevertheless the appeal has been accepted and considered by a medical board is a medical appeal tribunal entitled to hear and decide an appeal made to it by the claimant from the decision of the medical board by virtue of regulation 18 of the Mobility Allowance Regulations 1975.

2. The Secretary of State made a similar submission in writing in each case and a written submission was made by the claimant's solicitors who submitted (amongst other matters) that the medical appeal tribunal has jurisdiction to hear the appeal by the claimant. The Secretary of State, in his submission, invited the Commissioner to extend consideration to the question whether any decision of an insurance officer restricting the period of an award to a date before the claimant's 75th birthday is one against which the claimant has a right of appeal; and also to consider whether the claimant similarly has a right of appeal to a medical appeal tribunal under regulation 18(1) against a decision by a medical board restricting the period of an award.

3. At the oral hearing before us, the claimant was represented by Mr J Douglas, solicitor, of the Child Poverty Action Group and the Secretary of State was represented by Mr R G S Aitken of the solicitor's office of the Department of Health and Social Security. The claimant was present at the hearing before us.

4. The claimant, now aged 36, suffers from the effect of operation(s) on paralysed left lower leg due to poliomyelitis. On 15 December 1978 she claimed mobility allowance. The insurance officer referred the medical question arising on the claim to a medical practitioner for examination and report in accordance with regulation 13(2) of the Mobility Allowance Regulations 1975 (referred to as "the regulations"). In a report, dated 8 February 1979, the medical practitioner expressed his opinion to the effect that the claimant satisfied the conditions for an award of mobility allowance and that the claimant's inability or virtual inability to walk was likely to continue without significant improvement for 3 years (the upper age limit is now 75). On consideration of the medical question referred to the medical practitioner, the insurance officer may himself determine the question in favour of the claimant or determine it adversely to the claimant or refer the question to a medical board for their decision (regulation 15(2)). The insurance officer decided the question in the claimant's favour both as regards the award of the allowance and the period of 3 years during which the medical practitioner was of opinion that the disability was likely to ensue, namely from 15 December 1978 to 14 December 1981.

5. In a letter, dated 25 April 1980, the claimant wrote that she wished to appeal against the period of 3 years for which the allowance had been awarded because she seemed to be getting no better and she wanted to take advantage of the Motability scheme to purchase a car on hire-purchase. The claimant was advised that she could appeal to a medical board against the period of the award and duly appealed, the Secretary of State conceding that there was good cause for the late appeal. The appeal was referred to a medical board for their decision in accordance with regulation 17(1). On 29 October 1980, the medical board decided that the claimant did not satisfy the medical condition for an award of mobility allowance. The insurance officer thereupon reviewed and revised his decision awarding mobility allowance under section 104 of the Social Security Act 1975 (referred to as "the Act") and regulation 15 of the regulations to the extent that mobility allowance was not payable from and including 29 October 1980 and repayment was not required of benefit overpaid. The claimant then appealed against the decision of the medical board and the appeal was referred to the medical appeal tribunal in accordance with regulation 18(1) of the regulations. The medical appeal tribunal referred the questions stated above to the Commissioner.

6. In paragraphs 2 and 3 of the Secretary of State's written submission, reference was made to regulation 16 of the regulations, which provides a right of appeal when an insurance officer "... has determined a medical question adversely to the person in respect of whom an allowance is claimed". It was submitted that it can be argued from the language of that regulation that, when Parliament approved the regulations, the intention expressed therein was to

exclude a right of appeal from a decision of an insurance officer that was favourable to the claimant. It was submitted by Mr Douglas that any decision that restricts the period of an award is adverse.

7. In our opinion, the decision of the insurance officer awarding the allowance to the claimant for 3 years, following precisely the opinion of the medical practitioner, was not adverse. The claimant's main reason for appealing appears to have been because the period of the award did not enable her to take advantage of the Motability scheme. We do not regard the reason for appealing as relevant if the decision had been adverse but, in our opinion, the decision was not adverse and there was no right of appeal against it. If a decision is said to be adverse when it is wholly in the claimant's favour on the medical question, there is no limit to the number of appeals likely to be made to a medical board and thence to a medical appeal tribunal. It follows that both the appeal to the medical board and thence to the medical appeal tribunal were not sustainable and must be set aside as nullities. The insurance officer's decision on review was also a nullity and the decision awarding the allowance for the 3 years from 15 December 1978 to 14 December 1981 stands.

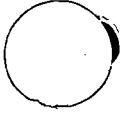
8. If we are wrong as to there being no right of appeal in the circumstances, we refer to our Decision on Commissioners' file C.M./59/1980 in which we deal with the submissions of the claimant's representative at the hearing before us. Our reasons, substituting dates and references to those applicable to this decision, are the same as those set out in paragraphs 7 to 15 of that decision, a copy of which is attached.

9. The questions submitted in this reference are different from those in our decision referred to above and our opinion on the questions submitted, for the reasons we have set out, are -

1. Answer - No.
2. Answer - No.
3. On the questions we were invited by the Secretary of State to consider, we do not regard any decision of an insurance officer restricting the period of an award to a date before the claimant's 75th birthday as being one against which the claimant necessarily has a right of appeal. We can think of no good reason why awards of mobility allowance should not be subject to limited periods in

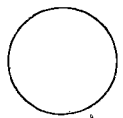
appropriate cases comparable with the practice for awards of disablement benefit for industrial injuries. If, however, an award is for less than the period indicated in the medical question, there is a right of appeal. In our opinion, a claimant has a right of appeal to a medical appeal tribunal under regulation 18(1) against a decision by a medical board restricting the period of an award.

(Signed) I O Griffiths
Chief Commissioner



(Signed) J S Watson
Commissioner

(Signed) D G Rice
Commissioner



Date: 27 May 1982

Commissioner's File: C.M. 33/1981
DHSS File: B.51023/258