

CT 34/1981

T/EFM

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: - Graham Leslie Taylor  
Medical Appeal Tribunal: - Birmingham.  
Original Decision Case No: - 214/1/80.  
(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 are -

1. Whether any decision on the question in regulation 13(1)(c) of the Mobility Allowance Regulations 1975 specifying a period limited by a date earlier than pensionable age can be said to be adverse so as to enable an appeal to be brought to a medical board and, if not,
2. whether the decision of the medical board on 14 November 1979 in this appeal stands (subject to appeal) or whether it is a nullity.

2. The Secretary of State made a similar submission in writing in each case and the claimant's case was presented by the Child Poverty Action Group. 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 did not attend the hearing before us.

4. The claimant, now aged 40, suffers from osteoarthritis of both hips. On 1 March 1976 he 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 11 May 1976, 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 until pensionable age (the upper age limit is now 75) unless bilateral hip replacement was eventually carried out successfully. 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 to the extent that he awarded the allowance but limited the period of the award to 5 years from 1 April 1976 to 31 March 1981.

5. The claimant applied in 1978 for Motability assistance but was informed that Motability only provided cars for those people who have been awarded mobility allowance for the next 3 or 4 years and, since his award would end in 1981, advised him to obtain a fresh award. The claimant, however, objected to the period of the award and was advised that, if he did not wish to await the outcome of a renewal claim in 1981, he could appeal to a medical board against the period of his present award. The claimant duly appealed and the Secretary of State conceded 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 14 November 1979, 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 so that benefit was not payable from and including 1 April 1976 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. At this point we refer to our decision on Commissioners' file CM/59/1980 in which we deal with the submissions of the claimant's representative at the hearing before us. Our reasons and answers to the questions raised, substituting dates and references to those applicable to this decision, are the same as those set out in paragraphs 7 to 16 of that decision, a copy of which is attached.

(Signed) I O Griffiths  
Chief Commissioner

J S Watson  
Commissioner

D G Rice  
Commissioner

Date: 27 May 1982

Commissioner's File: C.M. 34/1981  
DHSS File: B.51023/227