

Words on Claim form SPI indicating unable to walk far and amount to claim for MA - for Sec of State to decide if sufficient in circumstances.

WMW/HJD

Commissioner's File: CSM/7/89

SOCIAL SECURITY ACTS 1975 - 1988

APPEAL TO THE COMMISSIONER FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL UPON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal: Lerwick

Case No: 528/00056

1. I hold the decision of the Lerwick Social Security Appeal Tribunal dated 25 August 1988 to be in error of law. For that reason I set aside that decision. In exercise of the power contained in section 101(5)(a)(i) I give the decision which I consider the tribunal should have given. That decision is that the passage quoted below in paragraph 3 and contained in the claimant's SPI received on 17 July 1986, under the heading "Use this space if you want to tell us anything else", amounted to a claim for mobility allowance; and to refer the question as to whether in the circumstances of this case that claim has been made in sufficient manner to be acceptable to the Secretary of State, to him for his consideration under regulation 4(b) of the Social Security (Claims and Payments) Regulations, 1979.

2. On 14 January 1988 the claimant, who was then past his 66th birthday, completed form MY1, being an application for mobility allowance. On that form he declared, amongst other things, that he had not applied for mobility allowance earlier. On 28 January 1988 an adjudication officer issued a decision holding the claimant not entitled to mobility allowance because (i) he was over the age of 65, and (ii) he had not both been entitled to mobility allowance in respect of a period ending immediately before the date on which he attained the age of 65 and had made the claim before the date on which he attained the age of 66. That decision was based upon section 37A(5)(aa)(i) and (ii) of the Social Security Act 1975. The claimant appealed.

3. At the tribunal hearing it was argued on behalf of the claimant that a statement made on a form SPI, a supplementary pension claim form, undated but received by a local office of the Department on 17 July 1986, the claimant had said this, amongst other matters, under the heading "Use this space if you want to tell us anything else" -

"I have angina and am unable to walk any distance. Just now I am having to try and keep my old car on the road to enable me to get around. However if I cannot get anything extra on our pension we will be forced to get rid of it and have to stay at home as taxi hires will be impossible. Could you please consider this too."

That was something that was submitted to the tribunal to amount to, or at least to be acceptable as, an application for mobility allowance. At the date of that supplementary pension claim form the claimant had passed his 65th birthday.

4. The tribunal made findings of fact material to their decision as follows -

"The form SP1 dated and signed by [the claimant] on 17.7.86 and received by the Department constituted a valid application for mobility allowance. The appellant's date of birth was 18.6.21."

Given the evidence before the tribunal there was, of course, an error in those findings of fact in respect that form SP1 had not been dated by the claimant on 17 July 1986, but had been received by the Department on that date. The unanimous decision of the tribunal was that the claimant satisfied the age conditions contained in the Act based upon an application received on 17 July 1986 and directed the adjudication officer to refer the medical questions arising to a medical board. It is then noted that they decided, although strictly it was a prior question, that the tribunal could proceed to determine the questions arising from the form SP1 in terms of section 102 of the Act. They gave as their reasons for decision this -

"The appellant by completing form SP1 and drawing the Department's attention to his medical condition and seeking assistance for that medical condition had made a valid application for mobility allowance, such application having been lodged after the appellant was 65 but before he was aged 66. In the interest of justice the new submissions concerning form SP1 required to be considered without further adjournment."

Against that decision the chief adjudication officer now appeals, with leave of the chairman.

5. The ground of appeal is that regulation 4 of the Social Security (Claims and Payments) Regulations 1979 provides that it is for the Secretary of State to decide whether a document other than the approved claim form is in sufficient manner for the purposes of claiming benefit, so that the tribunal decision that the claim for supplementary pension was a valid application for mobility allowance was in error of law as being in excess of their jurisdiction. The adjudication officer has also put before me a certificate by the Secretary of State under regulation 4 of the Claims and Payments Regulations showing that in the period from 17 July 1986 to 14 January 1988 there is no document available which can be accepted as being made in sufficient manner for a claim for mobility allowance. That certificate was dated 3 December 1988 and so after the tribunal decision. Now regulation 4 of the Claims and Payments Regulations provides that -

"A claim for benefit is made in the prescribed manner if it is made in writing to the Secretary of State -

(a) on the form approved by him for the purpose of the benefit for which the claim is made and that form is duly completed; or

(b) in such other manner, in writing, as the Secretary of State may accept as sufficient in the circumstances of any case or class of cases

And in decision R(U)9/60 it was determined that it is for the, now adjudication, authorities to decide whether a document constitutes a claim for a benefit but that it is for the, now Secretary of State, to decide whether such a document is in a sufficient manner in the circumstances of any particular case. This, of course, all only applies to cases such as the present where the claim is not on the form provided for the purpose. And R(U)9/60 proceeded upon the terms of regulation 2 of the then Claims and Payments Regulations - of 1948 - which, for practical purposes, was in the same terms as regulation 4 of those of 1979. That authority has stood unchallenged for now 30 years. In any case it seems to me to be a correct statement of how regulation 4 falls to be operated and understood. Accordingly I hold that the tribunal were within their jurisdiction in making a determination upon the question whether form SP1 amounted to a claim, or application, for mobility allowance. And I further consider that there was sufficient in the passage quoted in paragraph 3 hereof, to indicate that the claimant was concerned about his state of health, mobility and finance - or rather in the case of the last two his lack of finance and a consequent potential loss of mobility on account of health, to justify the tribunal in holding that that amounted to a claim for mobility allowance. True it is, as founded on in R(S)1/63, that there is no reference to the benefit sought, or indeed to any benefit; but it was on a benefit claim form, albeit for another benefit in another scheme, and did, however imperfectly draw attention to a need for finance to avoid health restricted mobility. I am not sure that I would, entirely by myself, have come to the conclusion that all that amounted to a claim for another benefit rather than a reinforcement of the need for the particular benefit then being sought. But, although I accept that the whole case is at large before me, because I think this sort of inference to be very much a question for a tribunal and their experience, rather than for a Commissioner alone, and because I can not hold that the tribunal were not entitled, in law to reach their conclusion, I elect to adopt that conclusion for the purpose of this decision. The adjudication officer also founds upon the later denial by the claimant that he then was applying for mobility allowance. I do not think that it is open to determine conclusively what, if any, inference should be drawn as to what a person's words should indicate at a particular time by reference to what he may say on the subject later. In any case what he then said, see paragraph 2 above, was only accurate; he had not as such made a claim for mobility allowance before.

6. The adjudication officer now concerned submits that upon the submission to them of form SPI the correct course of action by the tribunal would have been to adjourn the proceedings in order that the Secretary of State could determine whether the form was sufficient in the circumstances for the purpose of claiming the mobility allowance. I appreciate that is how matters proceeded in R(U)9/60 and, indeed, in R(S)1/63. For my part I consider that, logically, the primary question that arises is whether a particular document can be regarded as a claim to benefit at all. Only then does it fall to be referred to the Secretary of State for his decision as to whether it is in sufficient manner for his purpose in the circumstances of the case. Given the emphasis on the circumstances of the particular case, I consider it to be the preferable procedure that the Secretary of State has his attention focused on a particular document, or on particular material, before exercising his jurisdiction on sufficiency of manner. Moreover it may be that it can be of assistance to the Secretary of State to know why, in a particular case, certain material has been determined to amount to a claim. In short, what has been found from the material and any relevant evidence to justify something as amounting to a claim in a particular case may, for all that I can say, have some relevance to the question whether the manner is or is not sufficient in that particular case as well. That is not to be taken as meaning that I regard it as other than quite proper in a particular case to refer the sufficiency of manner question first to the Secretary of State; but I emphasize that whichever way the question is referred, it is intended to be done in regard to a particular document, or documents, or part of parts thereof.

7. I note that the question in this case has been referred to the Secretary of State subsequent to the tribunal decision. And the certificate reads that there is no document available, for the relevant period, which can be accepted as having been made in sufficient manner for a claim for mobility allowance. But the real question is not that general one but the particular: is the claim for mobility allowance contained in the SPI to be accepted as being in sufficient manner in the circumstances, including the facts found herein, of this particular case? I have, of course, no power to consider or determine the sufficiency of the certificate by the Secretary of State which is before me. But I have jurisdiction over the appropriateness of the question referred to the Secretary of State. If the certificate, as I take it to do, accurately reflects the question referred then I hold it to have been an inappropriate question. I thus consider that I am entitled, indeed bound, to refer to him what I conceive to be the correct question in this case. It is within his exclusive province to decide whether his existing certificate sufficiently deals with that question, or not. But hence the reference part of my decision, which is the one I consider the tribunal should have made.

8. I have thought it right to concentrate upon my own views in the case and those set out above answer, I hope sufficiently, the submissions now made by the adjudication officer.

9. I turn now to deal with certain submissions made on behalf of the claimant. It will be seen that I accept the first of these - to the effect that the prior question is for the adjudicating authorities to decide whether a document is a claim for benefit. To that extent the tribunal did not indeed err in law so far as they took that question to be within their jurisdiction nor as to their being entitled in law to reach their conclusion thereon. The next submission for the claimant relates to the issuance of the proper form upon the basis that the Secretary of State has a power to refer the claim to the person making it together with the approved form for due completion. But that provision, in regulation 6 of the 1979 Claims and Payments Regulations, is, in effect, an alternative to regulation 4. It provides that if a claim for a benefit is made on an approved claim form, but not the appropriate one, then the Secretary of State may treat the claim as if made on the proper form, but may go on to require the claimant to fill in the proper form. In this case I cannot hold that this was a claim made on an inappropriate form. I consider that that provision applies to a case where the whole form has been filled up for a claim to which it does not relate. This claim was made on a part of the form provided simply to allow people to tell the Department "anything else" - ie other than what had been declared for the claim properly made on the form. It is, I consider, for this purpose, in no better a position, so far as regulation 6 is concerned, than if the claimant had set out on a separate piece of paper what he wished the Department to know beyond what he had declared in his claim for supplementary pension.

10. Something is sought to be made of the distinction between what is said in regulation 4 about claims to benefit and what is said to be an allowance, being the mobility allowance described in section 37A of the Act. But section 34(1) lists the non-contributory benefits in the relevant chapter, chapter II, of the Act and that includes, at (cc) - "mobility allowance". Accordingly that is a benefit for the purposes of the statute, and so also the regulations made thereunder.

11. Finally there is a discussion in the submissions of the adjudication officer and those for the claimant about good cause for delay. But in that regard the adjudication officer is clearly correct: namely that whereas in regard to certain benefits good cause for delay in claiming may allow, in prescribed circumstances, a backdating from the date of actual claim to a notional date of claim for the purpose of satisfying qualification to the benefit, there is no such provision in respect of mobility allowance. Whilst, therefore, there may be many factors upon which the claimant could have founded to show good cause for delay in claiming, that cannot avail him in the present case. Lastly I should note that, in the matter of submissions to the Commissioner, it is not likely to be helpful to make allegations of negligence against individuals or against the Department such as have been mentioned in the submissions for the claimant. Commissioners are concerned with whether a particular decision, by a tribunal, is or is not sound in law.

12. The appeal succeeds in part.

(signed) W M Walker
Commissioner
Date: 26 February 1990

AJ119/9

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Phone 0253 856123 ext

Monday-Thursday 8.45am-5.00pm
Friday 8.45am-4.30pm

Mr J Robin Smith
Welfare Rights Centre
Harbour House
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LERWICK

Your reference

Our reference

MOB 1429000

Date

9 August 1990

Dear Mr Smith

I apologise for the delay in replying to your letter of 10 July 1990 about [redacted] claim for Mobility Allowance. The papers have now been received in this office and I am now able to confirm the present position.

[redacted] was awarded Mobility Allowance from 17 July 1986 to the day before his 80th birthday, 17 June 2001, the maximum award payable as a result of a decision of the Social Security Appeal Tribunal held on 25 August 1988.

A payable order for £3292.780 was issued to [redacted] on 15 June 1989 for payment of arrears from 17 June 1986 to 16 May 1989 and from thereon payment has been by order book.

Commissioner's Decision CSM 7/89 re-examined the decision of the Social Security Appeal Tribunal. They held that the tribunal's decision was erroneous in law. The Commissioner has referred the question of whether the claim, made on form SP1, has been made in sufficient manner to constitute a claim for Mobility Allowance, to the Secretary of State.

I am pleased to say that the Secretary of State has now provided a certificate accepting the form SP1 as such a claim. This means that [redacted] payment of Mobility Allowance will continue until 17 June 2001.

Yours sincerely



M DOBSON
Assistant Manager
Mobility Allowance Unit