

DGR/OG

CA 13/1982

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR ATTENDANCE ALLOWANCE

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is as follows

- (1) that the original decision of the insurance officer awarding attendance allowance for the inclusive period from 11 June 1979 to 3 July 1980 should be reviewed, because **after** that decision was given there was a relevant change of circumstances, and
- (2) that such decision should be revised so that attendance **allowance is** not payable for any day of free in-patient treatment from and including 20 August 1979.

2. A claim for attendance allowance was made by the claimant on 11 June 1979. At that time he was an in-patient in Digby Hospital Exeter, having been there from 5 October 1978. Although the Attendance Allowance Board certified that he satisfied the medical conditions for an award at the higher rate from the date of the claim to 3 July 1980, the effect of regulations 3 and 5 of the Social Security (Attendance Allowance) (No 2) Regulations 1975 /S.I. 1975 No 598/ was to prevent the claimant from receiving attendance allowance. However, the claimant was discharged from hospital on 30 June 1979, and attendance allowance was awarded at the higher rate, the award being put into payment from 2 July 1979 (the first appropriate pay-day following his discharge from hospital). On 17 July 1979 the claimant was admitted to Maudsley Hospital, Denmark Hill, London SE5 where, as far as I am aware, he is still a patient. As the period between his discharge from Digby Hospital and his admission to Maudsley Hospital was less than 28 days, the insurance officer took the view that **payment of the allowance even** for the first four weeks in Maudsley Hospital could not be made, and payment of attendance allowance was suspended from 17 July 1979. Manifestly, on any footing the date of suspension was erroneous, in that the claimant should at least have been paid up to 22 July 1979 (i.e. the day preceding the next pay-day as provided for in regulation 16(11) of the Social Security (Claims and Payments) Regulations 1979).

3. After an unsuccessful appeal to the local tribunal against the suspension of the allowance during the first four weeks of his stay in Maudsley hospital, the claimant now appeals to the Commissioner, the necessary leave having been given by the tribunal chairman. Initially, the insurance officer, subject to the correction of the commencement date of the suspension, resisted the appeal, and in view of the difficult point of law involved I directed an oral hearing. However prior to that hearing the insurance officer, having taken legal advice, changed his stance and supported the approach of the claimant. In view of this I considered it unnecessary for me to hold an oral hearing, and accordingly I now dispose of the matter on the papers.

4. The relevant statutory provisions are regulations 3 and 5 of the Social Security (Attendance Allowance) (No 2) Regulations 1975 /S.I. 1975 No 598/ as amended, which provide as follows:

"3. Subject to regulation 5, it shall be a condition for the receipt of attendance allowance for any period in respect of any person who has attained the age of 16 that during that period he is not maintained free of charge while undergoing medical or other treatment as an in-patient -

(a) in a health service hospital, within the meaning of the National Health Service Act 1977 or the National Health Service (Scotland) Act 1978, or other hospital or similar institution maintained or administered by or on behalf of the Secretary of State or the Defence Council; or

(b) in pursuance of arrangements made, or having effect, as if made, by the Secretary of State, or any body in the exercise of functions on behalf of the Secretary of State under either of these Acts in a hospital or similar institution other than the one to which paragraph (a) applies;
....."

"5.(1) Where a person was entitled to attendance allowance in respect of the period immediately before he commenced to undergo any treatment or entered any accommodation mentioned in regulation 3 or 4, as the case may be, those regulations shall not apply in respect of the first 4 weeks of any period during which he is undergoing such treatment or is in such accommodation.

(2) For the purposes of paragraph (1)

(a) 2 or more distinct periods separated by an interval not exceeding 28 days, or by 2 or more such intervals, shall be treated as a continuous period equal in duration to the total of such distinct periods and ending on the last day of the later or last such period;

(b)"

5. It is not in dispute that the two hospitals Digby and Maudsley fall within regulation 3(a), and that during the relevant periods the claimant was being treated there free-of-charge as an in-patient. Now, when the claimant entered Maudsley Hospital he was entitled to attendance allowance, so that prima facie in accordance with regulation 5(1) he was still entitled to attendance allowance for **the first four weeks** of his stay there as an in-patient. The difficulty in this case is whether or not, as the interval between the claimant's discharge from Digby Hospital and his admission to Maudsley Hospital **did not exceed** 28 days, regulation 5(2) operates to link the two periods of treatment as an in-patient, so that at the date of admission to the latter hospital the "four weeks concession" had already been used up. However, I do not think that this is the effect of regulation 5(2).

6. It is clear that regulation 5(2) is only "for the purposes of paragraph (1)" of regulation 5, and paragraph (1) only applies to a period, where immediately prior thereto the claimant was actually entitled to attendance allowance. The claimant was not entitled to attendance allowance immediately before he commenced his stay in Digby Hospital, and accordingly, in my judgment, that period is not caught by regulation 5(1), and as a necessary consequence is likewise not caught by regulation 5(2). Manifestly, the purpose of regulation 5, read as a whole, is to allow a partial exemption from the effect of regulation 3, but on terms that, where two relevant periods are separated by 28 days or less, the claimant is not entitled to take advantage of the "four weeks concession" twice over. In the present case, there can be no question of the claimant's enjoying the partial exemption twice over, as he never enjoyed the concession whilst he was in Digby Hospital. Clearly, he is entitled to the concession once, and the approach of the local insurance officer and the local tribunal is to deprive him of it **entirely**. Such an approach is, in my judgment, wrong.

7. It follows from what I have said that the claimant is entitled to attendance allowance for the first four weeks of his stay in Maudsley Hospital, so that the suspension operates from 20 August 1979.

8. On the substantive point in issue, I allow this appeal.

(Signed) D G Rice
Commissioner

Date: 26 November 1982

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