

Effect of review on any ground by DMP pending appeal -  
original determination lapses - appeal must be against review.

See CA/108/1987.

TOC/SH/5

Commissioner's File: CA/20/1987

DHSS File: SD 450/2278

SOCIAL SECURITY ACTS 1975 TO 1986

APPEAL FROM DECISION ON REVIEW OF ATTENDANCE ALLOWANCE BOARD

ON A QUESTION OF LAW

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

Name: Patrick Anthony Dooley

[ORAL HEARING]

1. We have no jurisdiction to entertain this appeal. The determination of the Attendance Allowance Board by its delegated medical practitioner (DMP) dated 10 September 1986, was superseded by the determination of the DMP dated 11 November 1987 and ceased to be effective from that date. The appeal against the determination dated 10 September 1986 has, therefore, lapsed, and we have no jurisdiction to entertain this appeal.

2. The claimant was born in 1936. On 20 November 1982 he signed a form of claim for attendance allowance. On 12 March 1983 he was medically examined and on 25 March 1983 the DMP issued a certificate that he was entitled to attendance allowance at the higher rate for three years from 20 November 1982. The claimant continued to receive attendance allowance from the end of that period until 20 November 1986. On 11 March 1986 the Secretary of State applied for a review on the ground that there might have been a change in the claimant's condition. On 9 April 1986 the claimant was medically examined and a report dated 15 May 1986 was obtained from a consultant orthopaedic surgeon. On 10 September 1986 a DMP determined that there had been a relevant change of circumstances since the determination dated 25 March 1983 was made, namely that the claimant's attention needs had diminished, and reviewed that determination and revoked the higher rate certificate from 19 November 1985, that being the date that the claimant had been last examined by the consultant orthopaedic surgeon. By a letter dated 22 September 1986 the claimant expressed his wish to appeal against that determination. On 24 October 1986 a form of application for leave to appeal was sent to the claimant but he was then in hospital and his wife wrote a letter (dated or received on 5 November 1986) returning the form uncompleted. By a letter dated 24 November 1986 the claimant's wife was informed that as a result of her letter, her husband's case would be reviewed. On 26 November 1986 the claimant signed a form of application for leave to appeal against the determination dated 10 September 1986 and on 26 January 1987 a Commissioner granted leave to appeal. On 4 March 1987 the Secretary of State made a written submission on the appeal stating to the Commissioner that the representations in the letters dated 22 September 1986 and 5 November 1986 had been treated as a request for review of the determination dated 10 September 1986, that a DMP had granted the claimant leave to apply for a further review, that the review would be "on any ground" under section 106(1)(b) of the Social Security Act 1975, and the Secretary of State requested that the appeal be suspended until after determination of the review. On 29 May 1987 the Commissioner who had granted leave to appeal directed that the appeal be suspended until the outcome of a

review by the Attendance Allowance Board was known.

3. On (or before) 11 November 1987 a DMP made a determination and on 11 November 1987 he issued a certificate that the claimant was entitled to a higher rate attendance allowance from 1 September 1986 to 11 May 1989. In his reasons for that determination which were dated 28 July 1988 the DMP stated that he accepted the claimant's letter dated 22 September 1986 as a request for a review, that he granted leave for an application for review, and that he could review the decision dated 10 September 1986 on any ground: that he agreed with the opinion of the DMP in the determination of 10 September 1986 that the claimant then satisfied neither of the day or night conditions, but that the need for "the degree and nature of the help present had arisen in September 1986 which I take to be 1 September 1986" and he revised the determination of 10 September 1986 and issued a higher rate certificate commencing on 1 September 1986.

4. The claimant's appeal is against the determination of the DMP dated 10 September 1986. By the determination of another DMP on 11 November 1987 (as indicated above) that determination has been reviewed by another DMP under section 106(1)(b) of the Social Security Act 1975 and a higher rate certificate has been issued commencing on 1 September 1986. The first question, therefore, is to determine the effect upon the determination of 10 September 1986 of the determination on review on 11 November 1987. A similar question arose in the associated case CA/108/87. The Chief Commissioner appointed us as a Tribunal of Commissioners to determine both cases.

5. On 16 January 1989 we held an oral hearing. The claimant was represented by Miss Hanrahan, Solicitor, of the Warrington Community Law Centre, and the Secretary of State was represented by Mr Latter of Counsel instructed by the Solicitor, Departments of Health and Social Security. The case was adjourned until 16 March 1989. On that date Mr. Mark Rowland of Counsel instructed by Warrington Community Law Centre appeared on behalf of the claimant. Mr. Latter appeared again on behalf of the Secretary of State.

#### 6. The Law

We have, in the associated case CA/108/87 (a copy of our decision in which is attached as an appendix hereto), referred to the relevant statutory provisions which we do not need to repeat in this decision. We also referred to the decisions of the Commissioners which were helpfully cited by the Secretary of State in his further written submission in the present case dated 6 July 1988. For the reasons given in our decision in CA/108/87 we refer to the "decisions" of the DMPs as determinations.

7. In a written submission dated 27 January 1989 Mr. Rowland has submitted

- (1) that the determination of the DMP (see his reasons dated 28 July 1988) had in respect of the period 1 September 1986 onwards decided all issues in favour of the claimant, and his appeal in respect of that period was to be treated as having lapsed;
- (2) that if the present appeal against that determination succeeded (i) the period from 20 November 1982 was covered by the certificate dated 25 March 1983 (for 3 years from that date) and that the Board (or DMP) would have to consider afresh the Secretary of State's application (dated 11 March 1986) to review the determination giving rise to that certificate and (ii) that as the period 26 March 1986 to 31 August 1986 was not covered by any certificate, the Board (or DMP) would have to consider whether any of the medical conditions were satisfied for that period.

8. In the present case, as in the associated case CA/108/87, the review by the D.I.P on 11 November 1987 (the reasons being dated 28 July 1988) was a review of the previous determination dated 10 September 1986 "on any ground" under section 106(1)(b) of the Social Security Act 1975. The determination on review has dealt with the merits of the whole period under review. In our judgment, the determination dated 10 September 1986 has been superseded by the determination on 11 November 1987 and the appeal against the determination dated 10 September 1986 has lapsed.

8. At the conclusion of the adjourned hearing on 16 March 1987, Mr. Rowland filed a notice of application for leave to appeal against the determination dated 11 November 1987 (reasons given 28 July 1988). We have granted leave, and the appeal must now proceed in the normal way before a single Commissioner. We note that the Secretary of State supports the appeal. It may be, therefore, that the claimant and the Secretary of State will consent to the application being treated as the appeal: Social Security Commissioners Regulations 1987 regulation 5(3). That will be a matter for the Commissioner who will now deal with the appeal.

(Signed)

V.G.H. Hallett  
Commissioner

(Signed)

J.N.B. Penny  
Commissioner

(Signed)

A.T. Hoolahan  
Commissioner

Date: 17 April 1989