

JGM/GJH

SOCIAL SECURITY ACTS 1975 TO 1980

CLAIM FOR ATTENDANCE ALLOWANCE

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Audrey S Girvan (Mrs)
Evelyn Fish (Mrs)

Local Tribunal: Blackpool

Case No: 39/3

ORAL HEARING

1. My decision is that there was good cause for late application for review in this case and that attendance allowance is payable at the higher and not just the lower rate for the inclusive period from 6 February 1978 to 14 October 1979 as well as thereafter.
2. In this case the disabled person (who is in strictness the claimant) is a woman suffering from senile dementia. Her daughter made a claim for attendance allowance on her behalf on 6 September 1977. By virtue of section 35(4) of the Social Security Act 1975 the allowance could not be awarded for any period before that date or in practice for any period before the next following Monday 12 September 1977.
3. The matter was referred to a delegated medical practitioner (DMP) of the attendance allowance Board who gave an undated determination that the conditions for an award of the allowance at the lower rate were satisfied from 1 February 1978 and the allowance at the lower rate was awarded from the following Monday 6 February 1978. Another daughter (the claimant's nominated representative for purposes of supplementary benefit) was notified of this decision and the notification was accompanied by a form DS 330 which was in fact obsolete in that the rates of the allowance quoted in the document were no longer current. I infer that it reached the claiming daughter. The form is headed "To Accompany Notice of Entitlement to Lower rate Attendance Allowance", but the daughter only noticed that she was receiving the allowance at a rate higher than the higher rate shown in the notice sent to her and assumed that the allowance had been awarded at the higher rate. On 13 January 1980 she wrote a letter to the Department of Health and Social Security about her mother's needs, which has been taken as an application for review of the previous determination by the DMP.
4. On 28 February 1980 another DMP gave a determination to the effect that the conditions for an award of the allowance at the

higher rate had been satisfied since 7 September 1977. This determination was given by way of review of the previous DMP's determination on the ground that that determination was given in ignorance of a material fact in that the need for night attention was ignored. Whether this was really an indication that the decision was given in ignorance of a material fact or not does not matter as the decision has not been challenged and I think that it must be taken that there has been no material change in the mother's condition since the original determination was made.

5. The insurance officer on the basis of this review determination awarded the allowance at the higher rate but only from 15 October 1979 the first Monday within 3 months of the date of application for the review. Under regulation 31(1) and (2) of the Social Security (Determination of Claims and Questions) Regulations 1975 attendance allowance cannot be awarded from a date more than 3 months before the application for a review in the absence of good cause for late application, and it was on this account that the insurance officer refused the allowance from an earlier date. The claimant appealed to the local tribunal, who found good cause, and allowed the appeal awarding the allowance at the higher rate effectively from the date from which the previous award at the lower rate took effect, this being under regulation 31(6) of those regulations the earliest date from which it could be awarded, notwithstanding that the second DMP had certified that the conditions for an award were satisfied from the previous September. The insurance officer now appeals to the Commissioner. He was represented at the hearing before me by Mr EOF Stocker of the solicitor's office of the Department of Health and Social Security while the claimant was represented by Mr John Douglas a solicitor with the Child Poverty Action Group.

6. The case bears some resemblance to a number of other cases where there has been a similar review of a DMP's determination including the subject of my decision C.A. 3/80 (not reported). The claimant missed her opportunity of having the original decision reviewed on any ground under section 106(1)(b) of the Social Security Act 1975 when she failed to apply for review within three months. But this did not preclude an application for review on one of the more limited grounds indicated in section 106(1)(a), and having secured the review of the DMP's decision on one of these more limited grounds she is in my judgment entitled to have effect given to it subject only to the limitations of regulations 31 of the 1975 regulations above mentioned. She cannot go back to a date earlier than that from which the reviewed decision took effect, but she can go back that far if she had good cause for failure to apply earlier. In my decision C.A. 3/80 I expressed the view that a claimant so placed will have good cause for failure

to apply for review before such time as he or she knew or might reasonably be expected to have known that grounds for review existed. I do not see how this claimant can have been expected to know that the DMP who gave the first decision ignored the need for night attention and I agree with the local tribunal that good cause for late application for review has been shown and I dismiss the insurance officer's appeal accordingly.

(Signed) J G Monroe
Commissioner

Date: 19 January 1981.

Commissioner's File: C.A. 48/1980
C.I.O. File: I.O. 7073/AA/80
Region: N.F.C.O.