

DR/BB

COMMISSIONERS DECISION  
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SOCIAL SECURITY ACTS 1975 TO 1980

CLAIM FOR ATTENDANCE ALLOWANCE

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: [REDACTED] (Mrs.)

On behalf of Mother

[REDACTED] (Mrs.) (Deceased)

Local Tribunal: Glasgow

Case No: 59/1

1. My decision is that the decision of the local insurance officer awarding attendance allowance to Mrs. Mary Margaret Cooper at the lower rate from and including 10 April 1978 may be reviewed and that attendance allowance at the higher rate was payable from and including 10 April 1978.
2. This is an appeal relating to attendance allowance claimed by a Mrs. A. Shields on behalf of her mother, Mrs. Mary Margaret Cooper. Mrs. Cooper (the claimant) died on 26 December 1979. The relevant statutory provisions are explained in the written submission of the local insurance officer in connection with an appeal to a local tribunal and also in the written submission of the insurance officer now concerned with the case. They therefore need not be dealt with in any detail in this decision.
3. Mrs. Shields claimed attendance allowance for her mother on 1 March 1977, and on 7 April 1977 one of the Attendance Allowance Board's delegated medical practitioners considered that the said Mrs. Cooper satisfied a day condition but not one of the night conditions and that she therefore satisfied the medical conditions for an attendance allowance at the lower rate. On 19 April 1977 the local insurance officer awarded attendance allowance at the lower rate from 25 April 1977 to 9 April 1978. On 23 January 1978 Mrs. Shields renewed her claim on her mother's behalf. No medical examination took place on this occasion, and on 8 February 1978 one of the Board's delegated doctors certified that the claimant would continue to satisfy the conditions for an allowance at the lower rate. On 14 February 1978 the local insurance officer awarded an allowance at the lower rate from and including 10 April 1978. Mrs. Shields was notified of this decision on 14 February 1978.
4. In a letter dated 4 June 1979 Mrs. Shields wrote to the Attendance Allowance Unit asking for her mother's case to be reconsidered with a view to the claimant receiving the higher rate allowance. On 6 September 1979 an up-to-date medical report was obtained, and after considering this report one of the Board's delegated doctors certified on 8 November 1979 that the claimant had satisfied the conditions for an allowance at the higher rate for a period of 6 months on

/8 April

8 April 1978. I agree that the local insurance officer's decision awarding attendance allowance from and including 10 April 1978 at the lower rate may be reviewed. The position, however, under the relevant statutory provisions is that the claimant can only be found entitled to attendance allowance at the higher rate from a date earlier than 5 March 1979 if she shows that she had "good cause" for her delay in making an application for review until 4 June 1979.

5. In her letter dated 4 June 1979 in which Mrs. Shields asked for the award of attendance allowance at only the lower rate to be reconsidered she mentioned that the claimant had been receiving constant nursing care during the night since January 1979. It seems to me, however, having regard to the other evidence which is before me, and having regard to the findings of the local tribunal, that the claimant had required the same amount of attention etc. at night all along from the date when attendance allowance had first been claimed. Mrs. Shields, I feel, only mentioned January 1979 with a view to showing that the amount of night attention etc. had existed for at least 6 months before the date of her letter.

The case put forward by Mrs. Shields on behalf of her mother is to the effect that when the determination of the Attendance Allowance Board was made known to her in April 1977 she was disappointed and dissatisfied that it was considered that neither of the night conditions was satisfied. She assumed, however, that she had to accept that the Board's determination in this connection was correct and that the amount of attention etc. which was given to the claimant did not warrant an allowance at the higher rate being given. When she asked for the second award of allowance at the lower rate to be reconsidered in June 1979 she appears to have done so in view of additional financial commitments which she had to incur.

7. The insurance officer now concerned with the case agrees that generally speaking it might be argued that a claimant who assumes that the Attendance Allowance Board has correctly determined the extent of his attendance requirements can be regarded as having taken a reasonable attitude towards the Board's determination and therefore as having shown good cause for delay if he fails to apply timeously for a review. The insurance officer thereafter states, however, that that argument does not appear to be available to a claimant who has indicated that he was not satisfied with the determination and who can therefore be expected to have regard to the express advice regarding review given to him in the relevant form accompanying the decision. I am, however, not prepared to accept that submission in the present case. If one accepts, as I and the local tribunal have done, that the amount of night attention etc. remained the same throughout, then it seems to me that the claimant, although dissatisfied with the Board's determination, was entitled to assume that the Board's determination was correct and that it had to be accepted by her. This case, as it seems to me, is not one where a deterioration in a claimant's condition demanding additional attention etc. during the night had occurred but thereafter no steps were taken timeously to seek a review of a former decision awarding the allowance at only a lower rate. Although the evidence is not entirely clear I have decided to proceed upon the basis, contrary to the submission of the insurance officer now concerned with the case, that the circumstances remained unchanged throughout, and that

/Mrs. Shields

3.

Mrs. Shields considered that she just had to accept the Board's original determination. On a review of all the evidence before me I have decided to agree with the local tribunal that the claimant has shown good cause for her failure to ask for a review until 4 June 1979.

8. The insurance officer's appeal is disallowed.

(Signed) Douglas Reith  
Commissioner  
Date: 25 July 1980

Commissioner's File: C.S.A. 6/80  
C.I.O. File: I.O. 7042/AA/80  
Central Office File: A.A. Unit