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SOCIAL SECURITY ACTS 1975 TO 1980

CLAIM FOR ATTENDANCE ALLOWANCE

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Marion McL. Frame (Mrs.)

On behalf of

Marion McL. Frame (Miss)

Local Tribunal: Hamilton

Case No: 4/4

[ORAL HEARING]

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1. My decision is (1) that the decision of the insurance officer disallowing attendance allowance from and including 20 September 1973 is subject to review; and, upon review, (2) that attendance allowance at the lower rate is payable from and including 20 September 1973.

2. This is an appeal by the claimant against the decision of the local tribunal affirming a decision of the local insurance officer who held that whilst the aforesaid decision of the insurance officer disallowing attendance allowance could be reviewed it could only be revised so as to make attendance allowance at the lower rate payable from 14 August 1978. That limitation was imposed upon the ground of the 3 month restriction upon the effect of such a review under the provisions of regulation 31(1)(c) of the Social Security (Determination of Claims and Questions) Regulations 1975 and upon the basis that good cause before that period for the claimant's delay in making application for review was not stablished in terms of regulation 31(2) of the same regulations. An oral earing took place before me at which the claimant who attended and gave evidence was represented by Mr. Oliver, Welfare Rights Adviser, of Strathclyde Social Work Department. The insurance officer was represented by Mr. McGroarty. I am indebted to these gentlemen for their submissions.

3. Attendance allowance which is now payable under the provisions of section 35 of the Social Security Act 1975 was introduced as a single rate benefit in 1970 by the National Insurance (Old persons' and widows' pension and attendance allowance) Act 1970 section 4. In December 1971 the claimant who has a very severely handicapped daughter applied on her behalf for attendance allowance. On 12 January 1972 a delegated medical practitioner acting on behalf of the Attendance Allowance Board decided that the claimant's daughter did not satisfy the medical conditions laid down in the 1970 Act. Following an extension of the scope of the benefit to cover persons entitled to a lower or a higher rate allowance in 1973 the claimant was invited to re-apply, and did so on 20 September 1973. On 17 October 1973 a delegated medical practitioner decided that the claimant's daughter did not satisfy the conditions for an allowance at the lower rate. There

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is no record available of the notification said to have been sent to the claimant intimating the disallowance of the claimant's claim by the insurance officer and the claimant maintains she received no such intimation. At all events the claimant concluded after an interval that her renewed claim had been rejected. She acquiesced in that result. In late October 1978 the claimant was seen by Mr. Oliver who on 13 November 1978 applied for a review of the disallowance on her behalf.

4. Under the provisions of section 106(1) of the Social Security Act 1975 and regulations 8 and 9 of the Social Security (Attendance Allowance) (No.2) Regulations 1975 a review of a determination by the Attendance Allowance Board may be sought on any ground within the period of 3 months. Thereafter review is open only upon the ground that there has been a relevant change of circumstances since the determination was made, or that the determination was made in ignorance of, or was based on a mistake as to, a material fact. In terms of section 104(1)(c) of the Social Security Act 1975 the decision of an insurance officer based on a decision of the Attendance Allowance Board may be reviewed if the decision of the Attendance Allowance Board has been revised under section 106 above-mentioned. In the present case on 13 February 1979 a delegated medical practitioner on behalf of the Attendance Allowance Board issued a certificate that the claimant's daughter satisfied the conditions for attendance allowance at the lower rate from 20 September 1973 and had done so for a period of 6 months prior to that date and the Attendance Allowance Board accordingly made a revised determination to that effect under the provisions of section 106(1). The insurance officer was therefore prima facie entitled to review the decision disallowing benefit under the provisions of section 104(1)(c) above-mentioned. As mentioned in paragraph 2 of this decision, however, the insurance officer's revised decision was restricted in effect to the period of 3 months prior to the application for review. The main question in this appeal was therefore whether, it now being accepted that her daughter was all along entitled to attendance allowance at the lower rate, the claimant can establish good cause for her failure to apply for review before she did. The written grounds of appeal submitted on behalf of the claimant raised various alleged criticisms against the form and findings of the decision of the local tribunal but these grounds were (correctly in my opinion) not insisted upon at the hearing before me.

5. The claimant's evidence, which I accept, was that she was "disappointed but not dissatisfied" at the rejection of her renewed claim on behalf of her daughter in 1973. The authorities when inviting her claim in 1973 had only indicated that a person in her daughter's category might now be eligible. She assumed that the fresh medical assessment then made on behalf of the Attendance Allowance Board upon her renewed claim was correct. In the intervening period of years up to October 1978 she had no reason to change that view or to pursue the matter further until she met the Welfare Rights representative at the end of October 1978. The claimant was much confined to the house, having a husband who is 100 per cent disabled as well as her daughter to look after. Furthermore there was no material change in her daughter's condition such as might have prompted further inquiry. In these circumstances I have no hesitation in concluding that, despite the length of the delay, good cause is established by the claimant for her failure to seek any review before she did. I consider that the claimant was entitled to assume that the medical assessment made in October 1973 was correct without seeking any automatic review of it within 3 months. There were no new developments such as would cause a reasonable claimant to query

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the position until the claimant received advice in October 1978. Thereafter she acted promptly under that advice. A recent unreported case on the Commissioner's file (C.S.A.6/80) was very properly produced by the insurance officer's representative at the oral hearing. I am fortified in my conclusion by the view taken by the Commissioner in the very similar circumstances of that case. I have therefore decided to uphold the claimant's appeal on the matter of good cause, which was in the end not opposed by the insurance officer's representative, and to find that the claimant has established good cause throughout the period of her delay.

6. It is to be noted that whilst it was decided upon review by the delegated medical practitioner acting on behalf of the Attendance Allowance Board that the claimant's daughter did satisfy the conditions for the grant of attendance allowance at the lower rate from 20 September 1973 and that she had satisfied the necessary conditions for a period of at least 6 months prior to that date, the basis upon which the determination upon review differed from the original etermination made in October 1973 is not specified on the relative form containing the revised determination. Since the revised decision has effect from the original date it may be assumed that it did not proceed upon the basis of any relevant change of circumstances since the original decision. Accordingly it would appear that it was made upon the ground that the original decision was either made in ignorance of a material fact or was based upon mistake as to a material fact. There is no specification of any such material fact. It is therefore not made clear upon which of the statutory conditions contained in section 106(1)(a) of the Social Security Act 1975 the decision upon review was based. This is in my opinion unsatisfactory. The Secretary of State has not however sought to challenge that decision upon review as erroneous in law by reason of any such defect. Nor has the claimant for whose purposes the decision, being favourable, is no doubt regarded as adequate. In these circumstances I do not consider that it is incumbent on me to do more than to point out the deficiency which will no doubt be avoided in future by the Attendance Allowance Board.

7. The appeal of the claimant is allowed.

(Signed) J. G. Mitchell
Commissioner
Date: 3 October 1980

Commissioner's File: C.S.A.9/80
C.I.O. File: I.O.7053/AA/80
Central Office File: North Fylde Central Office