

SOCIAL SECURITY ACTS 1975 TO 1980

CLAIM FOR ATTENDANCE ALLOWANCE

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision No. C.S.A.1/81

1. My decision is (1) that the decision of the insurance officer awarding attendance allowance at the lower rate from and including 4 June 1973 is subject to review; and (2) that the decision should be revised from, but not earlier than, 4 June 1979 to award attendance allowance at the higher rate from 4 June 1979 to 16 September 1979 (both dates included).
2. On 21 January 1973 Mrs. Ann Ward claimed attendance allowance on behalf of her daughter Miss Rose Ward, a seriously handicapped person who was then aged 23. After the normal medical assessment a delegated medical practitioner on behalf of the Attendance Allowance Board granted a certificate for attendance allowance at the lower rate effective from 4 June 1973. The insurance officer duly awarded attendance allowance at the lower rate from and including that date. Attendance allowance is awarded to the person who requires the requisite attendance, and in view of the issue of "good cause" which arises in this case I propose to refer to Miss Rose Ward as "the claimant" and to her mother as "Mrs. Ward". The claimant's condition unfortunately deteriorated severely at the beginning of 1976. She suffered progressive renal failure and finally died on 11 September 1979. Shortly before the claimant's death Mrs. Ward on 4 September 1979 completed a fresh application form for attendance allowance. That application was treated as an application for review of the original award and on 13 December 1979 a delegated medical practitioner on behalf of the Attendance Allowance Board decided that the original determination could be reviewed upon the grounds of a relevant change of circumstances occurring since that determination was made, and upon the same date he granted a certificate that the claimant satisfied both one of the day conditions and one of the night conditions of attendance allowance from 1 July 1976 for life and accordingly granted a higher rate certificate.
3. In light of that revised decision the local insurance officer reviewed and revised the decision of the insurance officer awarding attendance allowance at the lower rate from 4 June 1973 and in respect of the period from 4 June 1979 to 16 September 1979 awarded attendance allowance at the higher rate. He held that the increase of attendance allowance could not be paid from a date earlier than 4 June 1979 because the claimant and Mrs. Ward had not proved that there was good cause for the delay in making an application for review. Mrs. Ward appealed to the local tribunal. Her appeal was unanimously refused on 29 May 1980. It

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should be mentioned in passing that the record of the tribunal's decision is a model of clarity and succinctness. Appeal has now been taken to the Commissioner.

4. Two points are raised by this appeal, namely (1) whether "claims" for supplementary benefit on behalf of the claimant can be treated as claims for attendance allowance and (2) whether good cause is shown for the delay in the application for a review. So far as the first point is concerned it appears that for a number of years before and after July 1976 the claimant was in receipt of supplementary benefit. There is statutory provision, now found in regulation 9(5) of the Social Security (Claims and Payments) Regulations 1979, whereby a claim for benefit under the Supplementary Benefits Act 1976 may be treated as a claim also for attendance allowance. Under regulation 4 of those Regulations it is for the Secretary of State for Social Services to determine whether a claim for benefit not made on the approved form is made in sufficient manner in a particular case. In this case the Secretary of State has decided that he is not prepared to accept the encashment of a paid order in respect of supplementary benefit as a claim for attendance allowance under the relevant regulations. His decision is dated 18 March 1980. In these circumstances no assistance in establishing an earlier date of claim (which might in turn be treated as an application for review) can be gained by reference to the claimant's receipt of supplementary benefit.

5. The second point relates to the establishing of "good cause". Regulation 31(1) of the Social Security (Determination of Claims and Questions) Regulation 1975 provides, in short, that where on a review a decision relating to benefit is revised so as to make benefit payable or increase the rate of benefit the decision given on review is in the case of attendance allowance to have effect as from the date 3 months before the date of the application for review. That is the provision which has enabled the decision on review in the present case to take effect from 4 June 1979. Regulation 31(2) provides that where it is shown that on a date earlier than the date on which the application for review was made the claimant was entitled to the benefit she shall not be disqualified for receiving the benefit if it is shown that throughout the period between the earlier date and the date on which the application for review was made there was good cause for the delay in making the application. Under regulation 31(3) there is in the case of a determination on review by the attendance allowance board an exception from the normal 12 month limitation upon the period for which good cause may effectively be established.

6. In the present case although the claimant's condition seriously deteriorated in January 1976 nothing was done which could be treated as an application for review until September 1979. The evidence indicates that the claimant was quite incapable of acting herself in such a matter and accordingly there would be no difficulty in sustaining good cause for her failure to act. However, Mrs. Ward acted on behalf of the claimant and was treated as so acting both at the time of the original claim and in making the fresh claim in September 1979. After her daughter's death Mrs. Ward was formally appointed to claim any benefit to which the claimant might have been entitled. This

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appointment was made under regulation 29 of the Social Security (Claims and Payments) Regulations 1979. No appointment was made in favour of Mrs. Ward during the claimant's lifetime under the provisions of regulation 28 of the same Regulations. So far as the evidence shows Mrs. Ward had no other formal authority to act on the claimant's behalf.

7. The question arises in these circumstances whether any delay on the part of Mrs. Ward is to be attributed to the claimant when judging whether "good cause" is shown by the claimant for the delay. In unreported case C.G.2/79 the view is expressed by the Commissioner in paragraph 9 that it is not permissible to attribute to the claimant the acts and omissions of some person who has elected without authority to interfere in his affairs. On the other hand it was argued in unreported decision C.A.3/80 that C.G.2/79 could be distinguished in a case where a mother had made an original claim on her daughter's behalf and there was subsequent delay in applying for a review. (That is of course the situation in the present case.) The Commissioner accepted the argument that any subsequent delay on the mother's part must be imputed to the claimant upon the view that the claimant could not get her case on its feet at all without first adopting the claim expressed to be made on her behalf by her mother and could not disown subsequent acts and omissions without repudiating that claim. In the present case Mrs. Ward made the initial claim for attendance allowance on behalf of the claimant who was unable to do so for herself. The claim was accepted and dealt with on that basis by the Department of Health and Social Security. Mrs. Ward administered the allowance for the benefit of the claimant for a number of years and eventually made the further claim which gave rise to the review. Her actions appear to me to fall within the doctrine of negotiorum gestio. Negotiorum gestio is defined in Bell's Principles of the Law of Scotland, paragraph 540, as "... the management of the affairs of one who is absent or incapacitated from attending to his affairs, spontaneously undertaken without his knowledge, and on the presumption that he would, if aware of the circumstances, have given a mandate for such interference". The principle has been applied to acts of administration within families in cases of incapacity. See Fernie v Robertson 1871 9 M 437. In cases where this principle is applicable the incapax or his estate is liable for the acts of the gestor. In the circumstances of this case and having regard to the foregoing principle of Scots law I am of the opinion that responsibility for any delay on the part of Mrs. Ward must be imputed to the claimant.

8. However even assuming that the delay by Mrs. Ward must be imputed to the claimant there remains a question whether good cause can be shown for that delay. It is clear from the evidence that Mrs. Ward was devoted to the care of the claimant. Her doctor in a letter dated 8 May 1980 states that Mrs. Ward was "in a distraught state for the last couple of years" and considers that her preoccupation with the claimant's wellbeing explains her lateness in applying for allowances to which he is convinced she was entitled. Mrs. Ward did however make a fresh claim for attendance allowance shortly prior to the claimant's death and she could not but be aware of the deterioration in the claimant's condition which had happened in and after 1976. With some regret I have come to the conclusion that I am unable to sustain the argument based

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upon good cause for the delay in making the further claim. In these circumstances I must uphold the decision of the local tribunal.

9. The appeal of the claimant is refused.

(Signed)

J. G. Mitchell
Commissioner
Date: 3 August 1981

Commissioner's File: C.S.A.20/80

C.I.O. File: I.O.7095/AA/80

Central Office File: North Fylde

Attendance Allowance Unit