
STATUTORY INSTRUMENTS

1995 No. 1801

The Social Security (Adjudication) Regulations 1995

PART II

COMMON PROVISIONS

Procedure in connection with determinations; and right to representation

2.—(1) Subject to the provisions of the Administration Act and of these Regulations—

- (a) the procedure in connection with the consideration and determination of any claim or question to which these Regulations relate shall be such as the Secretary of State, the adjudicating authority or the person holding the inquiry, as the case may be, shall determine; so however that in the case of a tribunal or board, the procedure shall be such as the chairman shall determine;
- (b) any person who by virtue of the provisions of these Regulations has the right to be heard at a hearing or an inquiry may be accompanied and may be represented by another person whether having professional qualifications or not and, for the purposes of the proceedings at any such hearing or inquiry, any such representative shall have all the rights and powers to which the person whom he represents is entitled under the Administration Act and these Regulations.

(2) For the purpose of arriving at its decision an appeal tribunal, a medical board, a special medical board, a medical appeal tribunal or a disability appeal tribunal, as the case may be, shall, and for the purpose of discussing any question of procedure may, notwithstanding anything contained in these Regulations, order all persons not being members of the tribunal or board, other than the person acting as clerk to the tribunal or board, to withdraw from the sitting of the tribunal or board, except that,

- (a) a member of the Council on Tribunals or of the Scottish Committee of the Council and the President and any full-time chairman; and
- (b) with the leave of the chairman of the tribunal or board, and if no person having the right to be heard objects, any person mentioned in regulation 4(6)(b) and (d) (except a person undergoing training as an adjudication officer or as an adjudicating medical practitioner),

may remain present at any such sitting.

(3) Nothing in these Regulations shall prevent a member of the Council on Tribunals or of the Scottish Committee of the Council from being present at a hearing before an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal or at any inquiry, in his capacity as such, notwithstanding that the hearing or inquiry is not in public.

Manner of making applications, appeals or references; and time limits

3.—(1) Any application, appeal or reference mentioned in column (1) of Schedule 2 shall be in writing and shall be made or given by sending or delivering it to the appropriate office within the specified time.

(2) In this regulation—

- (a) “the appropriate office” means the office specified in column (2) of Schedule 2 opposite the description of the relevant application, appeal or reference listed in column (1); and
- (b) “the specified time” means the time specified in column (3) of that Schedule opposite the description of the relevant application, appeal or reference so listed.

(3) The time specified by this regulation and Schedule 2 for the making of any application, appeal or reference (except an application to the chairman of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal for leave to appeal to a Commissioner) may be extended for special reasons, even though the time so specified may already have expired, and any application for an extension of time under this paragraph shall be made to and determined by the person or body to whom the application, appeal or reference is sought to be made or, in the case of a tribunal or board, its chairman.

(4) An application under paragraph (3) for an extension of time which has been refused may not be renewed.

(5) Any application, appeal or reference under these Regulations shall contain particulars of the grounds on which it is made or given and, in the case of an appeal, it shall include sufficient particulars of the decision under appeal to enable that decision to be identified.

(6) Where it appears to the Secretary of State, an adjudication officer or the chairman of a tribunal or board that an application, appeal or reference which is made to him or to the tribunal or board gives insufficient particulars to enable the question at issue to be determined, he may require the person making the application, appeal or reference to furnish such further particulars as may reasonably be required.

(7) A chairman of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal may give directions for the disposal of any purported appeal where he is satisfied that the tribunal does not have jurisdiction to entertain the appeal.

Oral hearings and inquiries

4.—(1) This regulation applies to any oral hearing of an application, appeal or reference and to any inquiry.

(2) Reasonable notice (being not less than 10 days beginning with the day on which the notice is given and ending on the day before the hearing of the case or, as the case may be, the inquiry is to take place) of the time and place of any oral hearing before an adjudicating authority or of an inquiry shall be given to every party to the proceedings, and if such notice has not been given to a person to whom it should have been given under the provisions of this paragraph the hearing or inquiry may proceed only with the consent of that person.

(3) If a party to the proceedings to whom notice has been given under paragraph (2) shall fail to appear at the hearing or inquiry the adjudicating authority or the person holding the inquiry may, having regard to all the circumstances including any explanation offered for the absence, proceed with the case of inquiry notwithstanding his absence, or give such directions with a view to the determination of the case or conduct of the inquiry as it or he may think proper.

(4) Any oral hearing before an adjudicating authority and any inquiry shall be in public except where (in the case of an oral hearing) the claimant requests a private hearing or (in any case) the chairman or the person holding the inquiry is satisfied that intimate personal or financial circumstances may have to be disclosed or that considerations of public security are involved, in which case the hearing or inquiry shall be in private.

(5) At any oral hearing or inquiry any party to the proceedings shall be entitled to be present and be heard.

(6) The following persons shall also be entitled to be present at an oral hearing (whether or not it is otherwise in private) but shall take no part in the proceedings—

- (a) the President and any full-time chairman;
- (b) any person undergoing training as a chairman or other member of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal or as a clerk to any such tribunal, or as an adjudication officer or an adjudicating medical practitioner;
- (c) any person acting on behalf of the President, the Chief Adjudication Officer or the Secretary of State in the training or supervision of clerks to appeal tribunals, medical appeal tribunals or disability appeal tribunals or of adjudication officers or officers of the Secretary of State or in the monitoring of standards of adjudication by adjudication officers; and
- (d) with the leave of the chairman of the tribunal or board, as the case may be, and the consent of every party to the proceedings actually present, any other person.

(7) At any inquiry (whether or not it is otherwise in private) the following persons shall be entitled to be present but shall take no part in the proceedings—

- (a) any person undergoing training as an officer of the Secretary of State; and
- (b) any person acting on behalf of the Secretary of State in the training or supervision of officers of the Secretary of State; and
- (c) with the leave of the person holding the inquiry and the consent of all parties to the proceedings actually present, any other person.

(8) Nothing in paragraph (6) affects the rights of any person mentioned in sub-paragraphs (a) and (b) of that paragraph at any oral hearing where he is sitting as a member of the tribunal or acting as its clerk, and nothing in this regulation prevents the presence at an oral hearing or an inquiry of any witness.

(9) Any person entitled to be heard at an oral hearing or inquiry may address the adjudicating authority or person holding the inquiry, may give evidence, may call witnesses and may put questions directly to any other person called as a witness.

Postponement and adjournment

5.—(1) Where a person to whom notice of an oral hearing by an adjudicating authority or an inquiry has been given wishes to apply for that hearing or inquiry to be postponed he shall do so in writing to the chairman or, as the case may be, the person appointed to hold the inquiry stating his reasons for the application, and the chairman or person appointed may grant or refuse the application as he thinks fit.

(2) A chairman may of his own motion at any time before the beginning of the hearing postpone the hearing.

(3) An oral hearing or an inquiry may be adjourned by the adjudicating authority or, as the case may be, the person appointed to hold the inquiry at any time on the application of any party to the proceedings or of its or his own motion.

Withdrawal of applications, appeals and references

6.—(1) A person who has made an application to the chairman of the tribunal for leave to appeal to a Commissioner against a decision of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal may withdraw his application at any time before it is determined by giving written notice of intention to withdraw to the chairman.

(2) Any appeal to an adjudicating authority made under the Administration Act or these Regulations may be withdrawn by the person who made the appeal—

- (a) before the hearing begins by giving written notice of intention to withdraw to the adjudicating authority to whom the appeal was made and with the consent in writing of—
 - (i) in a case which originated in a decision of an adjudication officer, an adjudication officer; or
 - (ii) in any other case, the Secretary of State,and, in any case, of any other party to the proceedings; or
- (b) after the hearing has begun, with the leave of the adjudicating authority or, in the case of a tribunal or board, its chairman, at any time before the determination is made.
- (3) A reference by an adjudication officer to an appeal tribunal under section 21(2) of the Administration Act or to a medical board under regulation 45(3) or to a medical appeal tribunal under section 46(3) of the Administration Act may be withdrawn by him at any time before the reference is determined by giving written notice of intention to withdraw to the adjudicating authority to whom the reference was made, but in the case of a reference under section 46(3) of the Administration Act made at the instance of the Secretary of State only with his consent.
- (4) An application under regulation 13 for a decision of the Secretary of State on any question may, with his leave, be withdrawn at any time before the decision is given.

Striking-out of proceedings for want of prosecution

- 7.—(1) The chairman of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal may, subject to paragraph (2), on the application of any party to the proceedings or of his own motion, strike out any application, appeal or reference for want of prosecution including the failure of the appellant to comply with a direction given by the chairman under regulation 2(1)(a).
- (2) The chairman shall not make an order under paragraph (1) before a notice has been sent to the person against whom it is proposed that any such order should be made giving him a reasonable opportunity to show cause why such an order should not be made.
- (3) The chairman of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal may, on application by the party concerned, made not later than 12 months beginning with the date of the order made under paragraph (1), give leave to reinstate any application, appeal or reference which has been struck out in accordance with paragraph (1).

Non-disclosure of medical evidence

- 8.—(1) Where, in connection with the consideration and determination of any claim or question there is before an adjudicating authority medical advice or medical evidence relating to a person which has not been disclosed to him and in the opinion of the adjudicating authority or, in the case of a tribunal or board, its chairman, the disclosure to that person of that advice or evidence would be harmful to his health, such advice or evidence shall not be required to be disclosed to that person.
- (2) Evidence such as is mentioned in paragraph (1) shall not be disclosed to any person acting for or representing the person to whom it relates or, in a case where a claim for benefit is made by reference to the disability of a person other than the claimant and the evidence relates to that other person, shall not be disclosed to the claimant or any person acting for or representing him, unless the adjudicating authority, or in the case of a tribunal or board, its chairman, is satisfied that it is in the interests of the person to whom the evidence relates to do so.
- (3) An adjudicating authority shall not be precluded from taking into account for the purposes of the determination evidence which has not been disclosed to a person under the provisions of paragraph (1) or (2).
- (4) In this regulation “adjudicating authority” includes the Secretary of State in a case involving a question which is for determination by him.

Correction of accidental errors in decisions

9.—(1) Subject to regulation 11 (provisions common to regulations 9 and 10) accidental errors in any decision or record of a decision may at any time be corrected by the adjudicating authority who gave the decision or by an authority of like status.

(2) A correction made to, or to the record of, a decision shall be deemed to be part of the decision or of that record and written notice of it shall be given as soon as practicable to every party to the proceedings.

Setting aside decisions on certain grounds

10.—(1) Subject to regulation 11 (provisions common to regulations 9 and 10), on an application made by a party to the proceedings, a decision may be set aside by the adjudicating authority who gave the decision or by an authority of like status in a case where it appears just to set the decision aside on the ground that—

- (a) a document relating to the proceedings in which the decision was given was not sent to, or was not received at an appropriate time by, a party to the proceedings or the party's representative or was not received at an appropriate time by the adjudicating authority who gave the decision; or
- (b) a party to the proceedings in which the decision was given or the party's representative was not present at a hearing or inquiry relating to the proceedings; or
- (c) the interests of justice so require.

(2) An application under this regulation shall be made in accordance with regulation 3 and Schedule 2.

(3) Where an application to set aside a decision is entertained under paragraph (1), every party to the proceedings shall be sent a copy of the application and shall be afforded a reasonable opportunity of making representations on it before the application is determined.

(4) Notice in writing of a determination on an application to set aside a decision shall be given to every party to the proceedings as soon as may be practicable and the notice shall contain a statement giving the reasons for the determination.

(5) For the purposes of determining under these Regulations an application to set aside a decision there shall be disregarded regulation 1(3)(b) and any provision in any enactment or instrument to the effect that any notice or other document required or authorised to be given or sent to any person shall be deemed to have been given or sent if it was sent by post to that person's last known or notified address.

Provisions common to regulations 9 and 10

11.—(1) In regulations 9 and 10 "adjudicating authority" includes the Secretary of State.

(2) In calculating any time specified in Schedule 2 there shall be disregarded any day falling before the day on which notice was given of a correction of a decision or the record thereof pursuant to regulation 9 or on which notice is given of a determination that a decision shall not be set aside following an application made under regulation 10, as the case may be.

(3) There shall be no appeal against a correction made under regulation 9 or a refusal to make such a correction or against a determination given under regulation 10.

(4) Nothing in this Part shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from these Regulations.