

[See S.I. 1999/991 at page 1.6071. Reg. 1(2) of that S.I. states the date on which the new decisions and appeals regs come into force for each benefit. Therefore, the regs below remain in force up to and including 28.11.99 for those benefits for which 1999/991 is not yet in force.]

## 1997 No. 2237

### SOCIAL SECURITY

#### The Social Security (Recovery of Benefits) (Appeals) Regulations 1997

<i>Made</i> - - - -	<i>15th September 1997</i>
<i>Laid before Parliament</i>	<i>15th September 1997</i>
<i>Coming into force</i>	<i>6th October 1997</i>

The Secretary of State for Social Security, in exercise of the powers conferred by sections 23(9) and (10) and 189(4), (5) and (6) of the Social Security Administration Act 1992(a) and by sections 11(5), 12(6) and 29 of the Social Security (Recovery of Benefits) Act 1997(b), and of all other powers enabling her in that behalf, after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(c), hereby makes the following Regulations:

#### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Recovery of Benefits) (Appeals) Regulations 1997 and shall come into force on 6th October 1997.

(2) In these Regulations—

“the 1997 Act” means the Social Security (Recovery of Benefits) Act 1997;

“clerk to the tribunal” means a clerk to a medical appeal tribunal appointed in accordance with section 50 of, and paragraph 3 of Schedule 2 to, the Social Security Administration Act 1992;

“Commissioner” has the meaning given in section 191 of the Social Security Administration Act 1992;

“Compensation Recovery Unit” means the Compensation Recovery Unit of the Department of Social Security at Reyrolle Building, Hebburn, Tyne and Wear NE31 1XB;

“compensator” means a person making a compensation payment;

“full-time chairman” means a regional or other full-time chairman of medical appeal tribunals appointed under section 51(1) of the Social Security Administration Act 1992;

“President” means the President of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals appointed under section 51(1) of the Social Security Administration Act 1992.

(3) A reference in these Regulations to the parties to the proceedings is a reference to the Secretary of State and any person entitled under section 11(2) of the 1997 Act to make an appeal.

(4) Where, by any provision of these Regulations—

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(a) 1992 c.5. Section 23(9) and (10) are applied by section 13(3) of the Social Security (Recovery of Benefits) Act 1997; and section 189(4), (5) and (6) are applied by section 30(4) of that Act.

(b) 1997 c.27. Section 29 is cited for the definitions of “prescribed” and “regulations”.

(c) 1992 c.53.

- (a) any notice or other document is required to be given or sent to the Compensation Recovery Unit, or the clerk to or a chairman of a tribunal, that notice or document shall be treated as having been so given or sent on the day that it is received in the office of the Compensation Recovery Unit or of the clerk to the relevant tribunal, as appropriate; and
  - (b) any notice or other document is required to be given or sent to any other person, that notice or document shall, if sent by post to that person's last known or notified address, be treated as having been given or sent on the day that it was posted.
- (5) Subject to regulation 13(3), where by these Regulations any power is conferred on a chairman of a tribunal then -
- (a) if the power is to be exercised at the hearing of an appeal or application, it shall be exercised by the chairman of the tribunal hearing the appeal or application; and
  - (b) otherwise, it shall be exercised by a person who is eligible to be nominated to act as a chairman of a medical appeal tribunal under section 50(4) of the Social Security Administration Act 1992.

#### **Manner of making appeals and time limits**

2.—(1) Any appeal against a certificate of recoverable benefits shall, subject to paragraph (11), be in writing on a form approved by the Secretary of State and shall be given or sent to the Compensation Recovery Unit -

- (a) not later than 3 months after the date the compensator discharged the liability under section 6 of the 1997 Act;
- (b) where the certificate is reviewed by the Secretary of State in accordance with regulations made under section 11(5)(c) of the 1997 Act, not later than 3 months after the date the certificate is confirmed, or, as the case may be, a fresh certificate is issued; or
- (c) where an agreement is made under which an earlier compensation payment is treated as having been made in final discharge of a claim made by or in respect of an injured person and arising out of the accident, injury or disease, not later than 3 months after the date of that agreement.

(2) The time specified by this regulation for the making of any appeal may be extended, even though the time so specified may already have expired, provided the conditions set out in paragraphs (3) to (7) are satisfied; and any application for an extension of time under this paragraph shall be made to the Compensation Recovery Unit and shall be determined by a chairman of a medical appeal tribunal.

(3) Where the time specified for the making of an appeal has already expired, an application for an extension of time for making an appeal shall not be granted unless the applicant has satisfied the chairman considering the application that -

- (a) if the application is granted there are reasonable prospects that such an appeal will be successful; and
- (b) it is in the interests of justice that the application be granted.

(4) For the purposes of paragraph (3) it shall not be considered to be in the interests of justice to grant an application unless the chairman considering the application is satisfied that—

- (a) special reasons exist, which are wholly exceptional and which relate to the history or facts of the case; and
- (b) such special reasons have existed throughout the period beginning with the day following the expiry of the time specified by paragraph (1) for the making of an appeal and ending with the day on which the application for an extension of time is made; and
- (c) such special reasons manifestly constitute a reasonable excuse of compelling weight for the applicant's failure to make an appeal within the time specified.

(5) In determining whether there are special reasons for granting an application for an extension of time for making an appeal under paragraph (2) the chairman considering the application shall have regard to the principle that the greater the amount of time that has elapsed between the expiry of the time specified for the making of the appeal and the

making of the application for an extension of time, the more cogent should be the special reasons on which the application is based.

(6) In determining whether facts constitute special reasons for granting an application for an extension of time for making an appeal under paragraph (2) no account shall be taken of the following—

- (a) that the applicant or anyone acting for him or advising him was unaware of or misunderstood the law applicable to his case (including ignorance or misunderstanding of any time limits imposed by paragraph (1));
- (b) that a Commissioner or a court has taken a different view of the law from that previously understood and applied.

(7) Notwithstanding paragraph (2), no appeal may in any event be brought later than 6 years after the beginning of the period specified in paragraph (1) or if more than one such period is relevant, the one beginning later or latest.

(8) An application under paragraph (2) for an extension of time which has been refused may not be renewed.

(9) Any appeal or application under these Regulations shall contain the following particulars—

- (a) in the case of an appeal, the date of the certificate of recoverable benefits or review decision of the Secretary of State against which the appeal is made, the question under section 11 of the 1997 Act to which the appeal relates, and a summary of the arguments relied on by the person making the appeal to support his contention that the certificate is wrong;
- (b) in the case of an application under paragraph (2) for an extension of time in which to appeal, in relation to the appeal which it is proposed to bring, the particulars required under sub-paragraph (a) together with particulars of the special reasons on which the application is based.

(10) Where the appeal or application under paragraph (2) for an extension of time is made by the injured person or other person to whom a compensation payment has been made, there shall be sent with that appeal or application a copy of the statement given to that person under section 9 of the 1997 Act or if that statement was not in writing, a written summary of it.

(11) Where an appeal is not made on the form approved for the time being, but is made in writing, contains all the particulars required under paragraph (9) and, where applicable, is accompanied by the document required under paragraph (10), the Secretary of State may treat that appeal as duly made.

(12) Where it appears to the Secretary of State that an appeal or application does not contain the particulars required under paragraph (9) or is not accompanied by the document required under paragraph (10) he may direct the person making the appeal or application to provide such particulars or such document.

(13) Where paragraph (12) applies, the Secretary of State may extend the time specified by this regulation for making the appeal or application by a period of not more than 14 days.

(14) Where further particulars or a document are required under paragraph (12) they shall be sent or delivered to the Compensation Recovery Unit within such period as the Secretary of State may direct.

(15) The date of an appeal shall be the date on which all the particulars required under paragraph (9) and, where applicable, the document required under paragraph (10) are received by the Compensation Recovery Unit.

(16) In the case of an application under paragraph (2) for an extension of time for making an appeal, the chairman who determines that application shall record his decision in writing together with a statement of the reasons for the decision.

(17) As soon as practicable after the decision has been made, it shall be communicated to the applicant and to the Secretary of State and if within 3 months of such communication being sent the applicant or the Secretary of State so requests in writing, a copy of the record referred to in paragraph (16) shall be supplied to the Supplement No. 44 [July 98]

person making that request.

(18) The Secretary of State may treat any appeal as an application for review under section 10 of the 1997 Act, notwithstanding that a condition specified in paragraph (a) or (b) of section 10(1) is not satisfied.

### **General provisions relating to the procedure of tribunals**

**3.—**(1) Subject to the provisions of the 1997 Act and of these Regulations -

- (a) the procedure in connection with the consideration and determination of any reference to a medical appeal tribunal under section 12 of the 1997 Act shall be such as the chairman of the tribunal shall determine;
- (b) the chairman of a tribunal may give directions requiring any party to the proceedings to comply with any provision of these Regulations and may further at any stage of the proceedings either of his own motion or on a written application made to the clerk to the tribunal by any such party give such directions as he may consider necessary or desirable for the just, effective and efficient conduct of the proceedings and may direct any party to provide such further particulars or to produce such documents as may reasonably be required;
- (c) where under these Regulations the clerk to the tribunal is authorised to take steps in relation to the procedure of the tribunal, he may give directions requiring any party to the proceedings to comply with any provision of these Regulations;
- (d) any person who by virtue of the provisions of these Regulations has the right to be heard at a hearing 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, any such representative shall have all the rights and powers to which the person whom he represents is entitled under the 1997 Act and these Regulations.

(2) For the purpose of arriving at its decision a tribunal 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, other than the person acting as clerk to the tribunal, to withdraw from the sitting of the tribunal, 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,
  - (i) any person undergoing training as a chairman or other member of a medical appeal tribunal or as a clerk to such a tribunal, and
  - (ii) any other person to whose presence every party to the proceedings actually present consents,

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 a tribunal, in his capacity as such, notwithstanding that the hearing is not in public.

(4) Where a reference is made to a tribunal by the Secretary of State, the clerk to the tribunal shall give notice of it to the other parties to the proceedings.

### **Requirement for oral hearings**

**4.—**(1) Where a reference is made to a tribunal, the clerk to the tribunal shall direct every party to the proceedings to notify him if that party wishes an oral hearing of that reference to be held.

(2) A notification under paragraph (1) shall be in writing and shall be made within 10 days of receipt of the direction from the clerk to the tribunal or within such other period as the clerk to the tribunal or the chairman of the tribunal may direct.

(3) Where the clerk to the tribunal receives a notification in accordance with paragraph (2) the tribunal shall hold an oral hearing.

(4) The chairman of a tribunal may of his own motion require an oral hearing to be held if he is satisfied that such a hearing is necessary to enable the tribunal to reach a decision.

**Procedure at oral hearings**

5.—(1) Except where paragraph (4) applies, not less than 7 days notice, beginning with the day on which the notice is given and ending on the day before the hearing, of the time and place of any oral hearing before a tribunal 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 may proceed only with the consent of that person.

(2) The chairman of a tribunal may give notice before or during an oral hearing for the determination at that hearing by the tribunal, in accordance with the provisions of these Regulations, of any question referred under section 12 of the 1997 Act notwithstanding that a party to the proceedings has failed to indicate his availability for a hearing or to provide all the information which may have been requested, if the chairman is satisfied that such party—

- (a) has failed to comply with a direction regarding his availability or requiring information under regulation 3(1)(b) or (c); and
- (b) has not given any explanation for his failure to comply with such a direction; provided that the chairman is satisfied that the tribunal has sufficient particulars in order for the question to be determined.

(3) The chairman of a tribunal may give notice before or during, an oral hearing for the determination at that hearing by the tribunal, in accordance with the provisions of these Regulations, of any question where he believes the appeal on that ground has no reasonable prospect of success.

(4) Any party to the proceedings may waive his right to receive not less than 7 days notice of the time and place of any oral hearing as specified in paragraph (1).

(5) If a party to the proceedings to whom notice has been given under paragraph (1) fails to appear at the hearing the tribunal may, having regard to all the circumstances including any explanation offered for the absence and, where applicable, the circumstances set out in paragraph (2)(a) and (b), proceed with the hearing notwithstanding his absence, or give such directions with a view to the determination of any question referred to it as it may think proper.

(6) If a party to the proceedings has waived his right to be given notice under paragraph (4), the tribunal may proceed with the hearing notwithstanding his absence.

(7) Any oral hearing before a tribunal shall be in public except where the person making the appeal requests a private hearing or the chairman 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 shall be in private.

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

(9) 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 a medical appeal tribunal or as a clerk to such a tribunal;
- (c) any person acting on behalf of the President or the Secretary of State in the training or supervision of clerks to medical appeal tribunals or of officers of the Secretary of State;

- (d) any person undergoing training as an officer of the Secretary of State; and
- (e) with the leave of the chairman of the tribunal and the consent of every party to the proceedings actually present, any other person.

(10) Nothing in paragraph (9) affects the rights of any person mentioned in subparagraph (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 of any witness.

(11) Any person entitled to be heard at an oral hearing may address the tribunal, may give evidence, may call witnesses and may put questions directly to any other person called as a witness.

#### **Postponement and adjournment**

6.—(1) Where a person to whom notice of an oral hearing by a tribunal has been given wishes to apply for that hearing to be postponed, he shall do so in writing to the clerk to the tribunal stating his reasons for the application, and the clerk may grant or refuse the request as he thinks fit or may pass the request to the chairman, who may grant or refuse the request as he thinks fit.

(2) The chairman or the clerk to the tribunal may of his own motion at any time before the beginning of an oral hearing postpone that hearing.

(3) An oral hearing may be adjourned by the tribunal at any time on the application of any party to the proceedings or of its own motion.

(4) Where an oral hearing is adjourned and at the hearing after the adjournment the tribunal is differently constituted, the proceedings at that hearing shall be by way of a complete rehearing of the case.

#### **Withdrawal of appeals**

7. Any appeal may be withdrawn by the person who made the appeal -

- (a) before a question has been referred to a tribunal under section 12 of the 1997 Act, by written notice in writing to the Compensation Recovery Unit and with the consent of the Secretary of State;
- (b) after the reference has been made and before the hearing begins, by written notice to the chairman of the tribunal to which a question was referred and with the written consent of the Secretary of State;
- (c) after the hearing has begun, at any time before the determination is made with the leave of the chairman of the tribunal and the consent of the Secretary of State.

#### **Non-disclosure of medical evidence**

8.—(1) Where, in connection with the consideration of any question, there is before a tribunal medical advice or medical evidence relating to a person which has not been disclosed to him, and in the opinion of the chairman of the tribunal 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.

(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 unless the chairman is satisfied that it is in the interests of the person to whom the evidence relates to do so.

(3) A tribunal 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).

#### **Decisions of tribunals**

9.—(1) The decision of the majority of the tribunal shall be the decision of the tribunal.

(2) Every decision of a tribunal shall be recorded in summary by the chairman in such written form of decision notice as shall have been approved by the President, and such decision notice shall be signed by the chairman.

(3) As soon as may be practicable after a case has been decided by a tribunal, a copy of the decision notice made in accordance with paragraph (2) shall be sent or given to every party to the proceedings who shall also be informed of—

- (a) his right under paragraph (6); and
- (b) the conditions governing appeals to a Commissioner.

(4) A statement of the reasons for the tribunal's decision and of its findings on questions of fact material thereto may be given -

- (a) orally at the hearing; or
- (b) in writing at such later date as the chairman may determine.

(5) Where the statement referred to in paragraph (4) is given orally, it shall be recorded in such medium as the chairman may determine.

(6) A copy of the statement referred to in paragraph (4) shall be supplied to the parties to the proceedings if requested by any of them within 21 days after the decision notice has been sent or given, and if the statement was given orally at the hearing, that copy shall be supplied in such medium as the chairman may direct.

(7) If a decision is not unanimous, the statement referred to in paragraph (4) shall record that one of the members dissented and the reasons given by him for dissenting.

(8) A record of the proceedings at the hearing shall be made by the chairman in such medium as he may direct and preserved by the clerk to the tribunal for 18 months, and a copy of such record shall be supplied to the parties if requested by any of them within that period.

#### **Correction of accidental errors in decisions**

**10.—**(1) Subject to regulation 12 (provisions common to regulations 10 and 11) accidental errors in any decision or record of a decision may at any time be corrected by the tribunal which gave the decision or by another medical appeal tribunal.

(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**

**11.—**(1) Subject to regulation 12 (provisions common to regulations 10 and 11), on an application made by a party to the proceedings, a decision may be set aside by the tribunal which gave the decision or by another medical appeal tribunal 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 tribunal which 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 relating to the proceedings; or
- (c) the interests of justice so require.

(2) In determining whether it is just to set aside a decision on the ground set out in paragraph (1)(b), the tribunal shall determine whether the party making the application gave a notification to the clerk of the tribunal that he wished an oral hearing to be held, and if that party did not give such a notification the tribunal shall not set the decision aside unless it is satisfied that the interests of justice manifestly so require.

(3) An application under this regulation shall—

- (a) be made in writing;
- (b) be given or sent to the office of the clerk to the tribunal which made the relevant

decision not later than 3 months after the date when notice of the tribunal's decision was sent or given to the applicant;

(c) contain particulars of the grounds on which it is made.

(4) The time specified in paragraph (3) for the making of an application may be extended for special reasons, even though the time so specified may already have expired, by the chairman of the tribunal; and regulation 2(16) and (17) (recording reasons for a decision and providing a copy of the record) shall apply in relation to any determination by a chairman.

(5) 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.

(6) 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.

(7) For the purposes of determining under these Regulations an application to set aside a decision there shall be disregarded regulation 1(4) 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 10 and 11**

**12.—**(1) In calculating any time specified in regulation 11 or 13, 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 10 or on which notice is given of a determination that a decision shall not be set aside following an application made under regulation 11, as the case may be.

(2) Without prejudice to provisions for appeals to Commissioners, there shall be no other appeal against a correction made under regulation 10 or a refusal to make such a correction or against a determination given under regulation 11.

(3) Nothing in regulation 10 or 11 shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from these Regulations.

#### **Application to a chairman for leave to appeal to a Commissioner**

**13.—**(1) Subject to the following provisions of this regulation, an application to the chairman of a tribunal for leave to appeal to a Commissioner from a decision of a tribunal shall—

- (a) be made in writing;
- (b) be given or sent to the office of the clerk to the tribunal which made the relevant decision not later than 3 months after the date when a notice of the tribunal's decision was sent or given to the applicant;
- (c) contain particulars of the grounds on which it is made;
- (d) have annexed thereto a copy of the statement of the reasons for the tribunal's decision referred to in regulation 9(4).

(2) Where an application for leave to appeal is made by the Secretary of State, the clerk to the tribunal shall, as soon as may be practicable, send a copy of the application to every other party to the proceedings.

(3) The decision of the chairman on an application for leave to appeal shall be recorded in writing and copies shall be given or sent to every party to the proceedings.

(4) Where in any case it is impracticable, or it will be likely to cause undue delay, for an application for leave to appeal against the decision of a tribunal to be determined by the person who was the chairman of that tribunal, that application shall be determined by any other person eligible to be nominated to act as a chairman of a medical appeal tribunal under section 50(4) of the Social Security Administration Act 1992.

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

Signed by authority of the Secretary of State for Social Security.

15th September 1997

*John Y. Denham*  
Parliamentary Under-Secretary of State,  
Department of Social Security

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**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision as to the manner in which, and time within which, appeals against certificates of recoverable benefits may be made and the procedure to be followed where such an appeal is made. They also make provision for applications to the chairmen of medical appeal tribunals for leave to appeal to Social Security Commissioners.

These Regulations impose no costs on business.

