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STATUTORY RULES OF NORTHERN IRELAND

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**1995 No. 293**

**The Social Security (Adjudication)  
Regulations (Northern Ireland) 1995**

**PART IV**

**PROVISIONS RELATING TO PARTICULAR BENEFITS OR PROCEDURES**

*SECTION A —  
PRESCRIBED DISEASES*

**Construction of Section A**

**43.**—(1) Regulation 34 applies for the construction of this Section as it applies for the construction of Section E of Part III.

(2) Except as provided in this Section, any reference in Part II of the Administration Act or in these Regulations to the relevant accident shall be construed as a reference to the relevant disease and any reference to the date of the relevant accident shall be construed as a reference to the date of onset of the relevant disease.

(3) In the following provisions of this Section any question arising in connection with a claim for, or award of, disablement benefit—

- (a) whether any person is suffering or has suffered from a prescribed disease, is referred to as a diagnosis question;
- (b) whether a prescribed disease has, in fact, been contracted afresh in a case where that question arises under the provisions of regulation 7 or 8 of the Prescribed Diseases Regulations<sup>(1)</sup> is referred to as a recrudescence question.

**Application of Part II of the Administration Act and of these Regulations**

**44.**—(1) Subject to regulation 52 (review on ground of unforeseen aggravation), the provisions of sections 42 and 45(5) of the Administration Act shall not apply in relation to prescribed diseases.

(2) The provisions of—

- (a) Part II of the Administration Act, subject to the provisions of this Section and Schedule 3; and
- (b) these Regulations, subject, in the case of each of the diseases numbered B6, C15, C17, C18, C22(b), D1, D2, D3, D7, D8, D9, D10, D11 and D12 in Part I of Schedule 1 to the Prescribed Diseases Regulations, to the provisions of Part V of those regulations,

shall apply for the determination of any question arising in connection with a claim for benefit under sections 108, 109 and 110 of the Contributions and Benefits Act in respect of a prescribed disease.

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(1) Relevant amending regulations are [S.R. 1989 No. 319](#) and [S.R. 1993 Nos. 148 and 350](#)

### **Reference of diagnosis and recrudescence questions for medical report**

**45.**—(1) Subject to paragraph (2), where a diagnosis or recrudescence question arises in any case, the adjudication officer shall forthwith refer that question for report to one or more medical practitioners who, in the case of each of the diseases numbered B6, C15, C17, C18, C22(b), D1, D2, D3, D7, D8, D9, D10, D11 and D12 in Part I of Schedule 1 to the Prescribed Diseases Regulations shall have power, if he or they consider it to be necessary, to do any or all of the following—

- (a) to make or cause to be made a radiological examination of the claimant's lungs;
- (b) to obtain the report of a radiologist or other physician on the case;
- (c) to make or cause to be made serological or lung function tests or such other tests as he or they consider necessary;
- (d) to obtain reports upon the results of such tests.

(2) The adjudication officer may determine a diagnosis or recrudescence question without referring it as provided by paragraph (1) if he is satisfied that such reference can be dispensed with having regard to—

- (a) a medical report signed by a medical practitioner on the staff of a hospital at which the claimant is receiving or has received treatment for a condition due to a prescribed disease, or by a medical officer engaged at the place of work where the claimant is or was employed; or
- (b) the decision on any similar diagnosis or recrudescence question which has been determined on the consideration of any previous claim or question arising in respect of the same disease suffered by the same person (including the date and terms of any medical reports on which such previous decision was based and of any medical certificates submitted by the claimant),

so however that a reference for report shall not be dispensed with on the grounds specified in subparagraph (a) except where a diagnosis question is determined in favour of the claimant or where a recrudescence question arises in connection with a diagnosis question which has been so determined under this regulation.

(3) The adjudication officer may, if he is satisfied that a reference for report as provided in paragraph (1) may be dispensed with on any of the grounds specified in paragraph (2), refer for the decision of an adjudicating medical authority any diagnosis or recrudescence question in connection with a claim in respect of each of the diseases numbered B6, C1.5, C17, C18 and C22(b) in Part I of Schedule 1 to the Prescribed Diseases Regulations, without having referred such a question for report.

(4) Where the adjudication officer is of the opinion that the claim or question submitted to him or any part thereof can be disposed of without determining any diagnosis or recrudescence question, he may make an award or determine that an award cannot be made or may determine the question submitted to him accordingly without referring such diagnosis or recrudescence question for report or before so referring it.

(5) Where the assessed extent of a person's disablement in respect of a prescribed disease amounts to one per cent. or more and during the period taken into account by that assessment, the beneficiary either—

- (a) applies for a review of such assessment; or
- (b) makes a further claim for disablement benefit in respect of a fresh attack of the disease,

any recrudescence question arising on such application or further claim instead of being referred for report shall be referred for decision to an adjudicating medical authority together with any disablement question which arises.

(6) The provisions of this regulation apply to an appeal tribunal as they apply to an adjudication officer with the modification that an appeal tribunal, instead of referring a diagnosis or recrudescence question to a medical practitioner in accordance with paragraph (1), shall direct the adjudication officer to refer it to an adjudicating medical authority in accordance with regulation 46 (procedure on receipt of medical report).

### **Procedure on receipt of medical report**

**46.**—(1) Where a diagnosis or recrudescence question is referred as provided by regulation 45(1), the adjudication officer shall, subject to the provisions of paragraph (4), proceed with the consideration of that question as soon as possible after he has received the report of the medical practitioner or practitioners to whom it was so referred.

(2) Where the question so referred is a diagnosis question, then, subject to regulation 47 (restriction of adjudication officer's power to determine diagnosis and recrudescence questions), the adjudication officer may determine the question or refer it to an adjudicating medical authority for decision.

(3) Where the question so referred is a recrudescence question, then, subject to regulation 47, the adjudication officer—

- (a) if he is satisfied having regard to the report that the disease ought to be treated as having been, in fact, contracted afresh, shall so treat it and shall determine the question accordingly; or
- (b) if he is not so satisfied, shall treat the disease as a recrudescence of the previous attack or as not having developed on or after 5th July 1948, as the case may require, and shall determine the question accordingly.

(4) Subject to the provisions of these Regulations, the provisions of sections 20, 23 to 27, 35 and 67 of the Administration Act(2) shall apply as if a diagnosis or recrudescence question were a question such as is referred to in section 35(1) of that Act and as if references in those sections to the determination of, or to the review of the decision of, such a question included references to the determination of, or to the review of the decision of, a diagnosis or recrudescence question under these Regulations.

### **Restriction of adjudication officer's power to determine diagnosis and recrudescence questions**

**47.**—(1) Where, on the consideration of a diagnosis or recrudescence question, the adjudication officer is of the opinion that there arises a disablement question, he shall not determine the diagnosis or recrudescence question but shall refer it to an adjudicating medical authority together with the disablement question.

(2) Where a diagnosis question is referred to an adjudicating medical authority under the provisions of regulation 46 (procedure on receipt of medical report) or 48 (appeal against decision of adjudication officer), the adjudication officer shall not determine any recrudescence question which arises in connection therewith but shall refer it to the adjudicating medical authority together with the diagnosis question.

### **Appeal against decision of adjudication officer**

**48.**—(1) Where, under the provisions of regulation 45 (reference of diagnosis and recrudescence questions for medical report) or 46 (procedure on receipt of medical report), an adjudication officer

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(2) Sections 23(1) and 25(2) were amended by paragraphs 46 and 47 respectively of Schedule 1 to the Social Security (Incapacity for Work) Order (Northern Ireland) 1994 (S.I.1994/1898 (N.I. 12))

has decided a diagnosis or recrudescence question, the claimant shall be notified in writing of the decision, of the reasons for it and of his right of appeal under paragraph (2).

(2) A claimant may appeal any decision mentioned in paragraph (1) to an adjudicating medical authority in accordance with the provisions of regulation 3 and Schedule 2.

(3) appeal is made against a decision on a recrudescence question, the adjudication officer shall also refer the diagnosis question, and the adjudicating medical authority may confirm, reverse or vary the decision on that question as on an appeal.

(4) Where a diagnosis or recrudescence question is referred to an adjudicating medical authority to which there is also referred a disablement question and the decision of the adjudicating medical authority on the diagnosis or recrudescence question enables the case to be decided adversely to the claimant, the adjudicating medical authority shall not determine the disablement question.

### **Appeal or reference to a medical appeal tribunal**

**49.**—(1) A claimant may appeal the decision of an adjudicating medical authority on a diagnosis or recrudescence question and in that event the case shall be referred to a medical appeal tribunal.

(2) If the adjudication officer is of the opinion, or if the Department notifies the adjudication officer that it is of the opinion, that any decision of an adjudicating medical authority on a diagnosis or recrudescence question ought to be considered by a medical appeal tribunal, the adjudication officer shall refer the case to a medical appeal tribunal for consideration and the tribunal may confirm, reverse or vary the decision as on an appeal.

### **Powers of a medical appeal tribunal upon determining the question referred**

**50.** Where a diagnosis or recrudescence question is referred to a medical appeal tribunal that tribunal, upon determining the question referred—

- (a) may proceed to determine any diagnosis or recrudescence question which arises in connection therewith and any disablement question which arises in consequence thereof and where a decision on any-such question has been given by an adjudicating medical authority, may confirm, reverse or vary that decision; and
- (b) where it is determined that the disease is a recrudescence of an attack to which an earlier decision of an adjudicating medical authority >-or a medical appeal tribunal relates, may proceed to review that earlier decision under the provisions of section 45(4) of the Administration Act.

### **Review of previous assessment following recrudescence decision**

**51.** Where, by reason of the provisions of regulation 7(4) of the Prescribed Diseases Regulations, the decision on a recrudescence question necessitates the review of a previous assessment of disablement, the adjudicating medical authority may review such previous assessment, as provided by section 45 of the Administration Act, so however that, in any such case, notwithstanding the provisions of subsection (7) of that section, a previous assessment may be reviewed as provided by this regulation at any time without the leave of a medical appeal tribunal.

### **Review on ground of unforeseen aggravation**

**52.** Section 45(S) of the Administration Act shall have effect as if—

- (a) after “this section” there were inserted “and of subsection (8A)”; and
- (b) the following subsection were inserted after subsection (8)—  
“(8A) Where—

- (a) a final assessment of the extent of disablement resulting from a loss of faculty has been made for a period limited by reference to a definite date; and
- (b) an application for review on the ground that there has been unforeseen aggravation of the results of the relevant disease is made within a period of three months immediately following that date,

the adjudicating medical authority shall determine the extent of disablement resulting from the relevant loss of faculty both for the period mentioned in paragraph (a) and any time after that period.”.

### **Review of a decision on diagnosis or recrudescence question**

**53.**—(1) Any decision on a diagnosis or recrudescence question of an adjudication officer, adjudicating medical authority or medical appeal tribunal may be reviewed at any time by a medical board if it is satisfied by fresh evidence that the decision was given in ignorance of, or was based on a mistake as to, some material fact, so however that a decision of a medical appeal tribunal on a diagnosis or recrudescence question shall not be reviewed by a medical board without the leave of a medical appeal tribunal.

(2) A question may be raised with a view to the review of any decision on a diagnosis or recrudescence question by means of an application in writing to an adjudication officer, and on receipt of such application the adjudication officer shall proceed to refer such question to a medical board, so however that where in the opinion of the adjudication officer such application raises a question as to the review of a decision of a medical appeal tribunal on a diagnosis or recrudescence question, the adjudication officer shall submit the application to a medical appeal tribunal so that such tribunal may consider whether leave shall be granted and shall not refer the question to a medical board unless the medical appeal tribunal grants leave.

(3) Subject to paragraphs (1) and (2), a medical board may deal with a case on review in any manner in which it could deal with it on an original reference to it, and regulation 49 (appeal or reference to a medical appeal tribunal) shall apply to a decision of a medical board in connection with an application for review as it applies to a decision on an original reference to it.

### **Additional provisions relating to the powers and decisions of adjudicating medical authorities**

**54.**—(1) Adjudicating medical authorities shall, when determining any question in respect of each of the diseases numbered B6, C15, C17, C18, C22(b), D1, D2, D3, D7, D8, D9, D10, D11 and D12 in Part I of Schedule 1 to the Prescribed Diseases Regulations, have power—

- (a) to make or cause to be made a radiological examination of the claimant’s lungs;
- (b) to obtain the report of a radiologist on the case;
- (c) to make or cause to be made serological or lung function tests or such other tests as they consider necessary; and
- (d) to obtain reports upon the results of such tests.

(2) Where, in respect of a claim for disablement benefit by reason of prescribed disease D1 (pneumoconiosis) or D2 (byssinosis), an adjudicating medical authority or a medical appeal tribunal gives a decision under the foregoing provisions of these Regulations that the claimant is or was suffering from one or other of those diseases—

- (a) that authority or tribunal may, on the evidence before it at the time of its decision, determine also the date from which the claimant has or had suffered from that disease;
- (b) notwithstanding the provisions of section 58(1) of the Administration Act, in making that determination, the authority or tribunal shall not be bound by any previous decision of an

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adjudication officer or adjudicating medical authority that the claimant was not suffering from that disease; and

- (c) any such previous decision, in so far as it is inconsistent with the said determination, shall cease to have effect.