1975 No. 341

SOCIAL SECURITY

The Child Interim Benefit (Determination of Questions) Regulations (Northern Ireland) 1975

Made . . . . . 1*st December* 1975

Coming into operation . . . 2*nd January* 1976

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The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by Article 18(7) and (9) of the Child Benefit (Northern Ireland) Order 1975(**a**), and of all other powers enabling it in that behalf, hereby makes the following regulations:

(a) S.I. 1975 No. 1504 (N.I. 16)

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Child Interim Benefit (Determination of Questions) Regulations (Northern Ireland) 1975 and shall come into operation on 2nd January 1976.

(2) In these regulations—

"the Order" means the Child Benefit (Northern Ireland) Order 1975;

"benefit" means benefit under Article 18 of the Order;

"claimant" means a person who has claimed benefit;

"determining authority" means, as the case may require, the Department, a tribunal or the Referee,

"hearing" means an oral hearing;

"the Referee" means a person appointed by the Lord Chief Justice under Article 18(7) of the Order for the purpose of determining an appeal from any decision given by a tribunal;

"tribunal" means a tribunal constituted in accordance with regulation 2(2) for the purpose of determining an appeal from any decision given by the Department under the said Article 18(7).

(3) Any notice or other document required or authorised to be given or sent to any person under the provisions of these regulations shall be deemed to have been given or sent if it was sent by post to that person at his ordinary or last known address.

Appellate bodies

2.—(1) An appeal shall lie to a tribunal from any decision given by the Department under Article 18(7) of the Order.

(2) A tribunal shall consist of—

(*a*) a chairman who shall be a person (being a person who is a barrister or solicitor) appointed by the Department under section 97(2)(*c*) of the Social Security Act to act as chairman of a local tribunal under that Act; and

(*b*) two other members, one of whom shall be a member of a panel referred to in section 97(2)(*a*) of the said Act (one member of a local tribunal to be a person drawn from a panel composed of persons representing employers and persons representing earners other than employed earners) and the other of whom shall be a member of a panel referred to in section 97(2)(*b*) of that Act (one member of a local tribunal to be a person drawn from a panel of persons representing employed earners).

(3) There shall be a right of appeal to the Referee from any decision given by such a tribunal as is referred to in paragraph (1).

Review of decisions

3.—(1) Subject to paragraph (3), any decision of a determining authority may be reviewed at any time by the Department if—

(*a*) it is satisfied and, in the case of a decision of the Referee, satisfied by fresh evidence, that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or

(*b*) there has been any relevant change of circumstances since the decision was given,

and the Department may review any decision given by it on the ground that it was erroneous in point of law.

(2) A question may be raised with a view to a review under this regulation by making application in writing to the Department, delivered or sent to an office of the Department, stating the grounds of the application.

(3) An application for a review which is not received in an office of the Department within 26 weeks of the end of the interim period shall not be entertained; and the Department shall not of its own motion institute a review more than 26 weeks after the end of the interim period.

(4) A decision given on a review under this regulation, or under regulation 4(2) or 13(2) of the Child Interim Benefit (Claims and Payments) Regulations (Northern Ireland) 1975(**b**), or a decision refusing to review a decision, shall be subject to appeal in like manner as an original decision, and regulations 2 and 4 shall, with the necessary modifications, apply in relation to such a decision as they apply to the original decision of a question.

PART II

ADJUDICATION BY A TRIBUNAL AND BY THE REFEREE

Time and manner of bringing appeals to a tribunal

4.—(1) When a question as to the right to benefit is decided by the Department adversely to the claimant, the Department shall inform the claimant of the decision, of the reasons for it, and of his right of appeal.

(2) An appeal against a decision given by the Department shall be brought at the instance of the claimant by giving notice of appeal to the Department within 21 days after the date of the decision, or within such further time as the chairman of a tribunal may in any case for good cause allow.

(3) A notice of appeal under this regulation shall be in writing and shall contain a statement of the grounds upon which the appeal is made.

Time and place of hearing before a tribunal

5.—(1) Reasonable notice of the time and place of any hearing shall be given to the claimant and to any person who may appear to the chairman of a tribunal to be interested and, except with the consent of the claimant, the tribunal shall not proceed with the hearing of any appeal unless such notice has been given.

(b) S.R. 1975 No. 340

(2) If a claimant or other person to whom notice of a hearing has been duly given in accordance with paragraph (1) should fail to appear at the hearing, a tribunal may proceed to determine the appeal notwithstanding such absence or may give such directions with a view to the determination of the appeal as having regard to all the circumstances including any explanation offered for the absence they may think proper; so however that if a reasonable explanation for his absence has been given by him or on his behalf a tribunal shall not without his consent determine the appeal in his absence, unless the hearing has first been adjourned for at least 1 month (or such shorter period as he may request) and reasonable notice of the time and place of the adjourned hearing has been given to him.

Hearing before a tribunal

6.—(1) Every hearing by a tribunal shall be in public except in so far as the chairman of a tribunal may otherwise direct if he is of the opinion that intimate personal or financial circumstances may have to be disclosed or that considerations of public security are involved.

(2) The following persons shall be entitled to be present and be heard at the hearing of any appeal—

(*a*) the claimant;

(*b*) the Department;

(*c*) a person appearing to a tribunal to be interested,

and any person appearing to a tribunal to be interested shall have the right to be present notwithstanding that the hearing of the case is not in public.

(3) Any appeal may with the consent of the claimant, but not otherwise, be proceeded with in the absence of any one member of a tribunal other than the chairman.

(4) Where a hearing is adjourned and at the adjourned hearing a tribunal is differently constituted, the proceedings at the adjourned hearing shall be by way of a complete rehearing of the appeal.

Procedure at hearings and right to representation

7.—(1) Subject to the provisions of the Order and of this Part of these regulations—

(*a*) the procedure in connection with the consideration and determination of an appeal brought under regulation 4 shall be such as the chairman of a tribunal shall determine;

(*b*) any person who by virtue of regulation 6(2) has the right to be heard at a hearing 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 Order and these regulations.

(2) For the purpose of arriving at their decision or discussing any question of procedure, a tribunal shall order all persons not being members of that tribunal, other than the person acting as clerk to that tribunal, to withdraw from the sitting of that tribunal.

(3) Any person having the right to be heard who appears at a hearing may call witnesses and shall be given an opportunity of putting questions directly to any witnesses called at the hearing and of addressing the tribunal.

Decisions of a tribunal

8.—(1) The decision of the majority of a tribunal shall be the decision of that tribunal, but where a tribunal consists of an even number the chairman shall have a second or casting vote.

(2) A tribunal shall—

(*a*) record in writing all their decisions; and

(*b*) include in the record of every decision a statement of the grounds of such decision and of their findings on questions of fact material thereto; and

(*c*) if a decision is not unanimous, record a statement that one of the members dissented and the reasons given by him for dissenting.

(3) As soon as may be practicable after an appeal has been decided by a tribunal, a copy of the record of their decision made in accordance with this regulation shall be sent to the Department, to the claimant and to any other person who appears to a tribunal to be interested; and if the decision of a tribunal in whole or in part is adverse to the claimant he shall be informed of his right to appeal therefrom to the Referee.

Time and manner of bringing appeals to the Referee

9.—(1) An appeal to the Referee must be brought within 3 months from the date of the decision of a tribunal, or within such further period as the Referee may in any case for good cause allow.

(2) The persons at whose instance an appeal under paragraph (1) shall lie are—

(*a*) the Department;

(*b*) the claimant,

and the appeal shall be brought by giving notice in writing stating the grounds of the appeal—

(i) in the case of an appeal by the Department, to the claimant; and

(ii) in the case of an appeal by the claimant, at an office of the Department.

Procedure on appeal from a decision of a tribunal

10.—(1) With the exception of paragraph (2) thereof, regulation 7 shall apply in relation to hearings before the Referee as if references therein to a tribunal and to the chairman of a tribunal were references to the Referee and as if the reference in paragraph (1) thereof to regulation 4 were a reference to regulation 9.

(2) If the Department or the claimant makes a request for a hearing of the appeal, the Referee shall grant such request unless, after considering the record of the case and the reasons put forward in the request for the hearing, he is satisfied that the appeal can properly be determined without a hearing, in which event he shall so inform in writing the party making the request giving reasons for his refusal to grant such request and may proceed to determine the case without a hearing.

(3) If, in accordance with the provisions of paragraph (2) a request for a hearing has been granted or if notwithstanding that no request has been made the Referee is otherwise satisfied that a hearing is desirable, reasonable notice of the time and place of the hearing shall be given to the Department and to the claimant and, if the Referee thinks fit, to any other person appearing to him to be interested.

(4) Any person to whom notice of the hearing has been given shall be entitled to be present and to be heard at the hearing.

(5) If any person to whom notice of the hearing has been duly given should fail to appear either in person or by representative at the hearing, the Referee may proceed to determine the appeal notwithstanding the absence of any such person or representative or may give such directions with a view to the determination of the appeal as he thinks proper.

(6) In any case in which a hearing of an appeal is held, it shall be in public except in so far as the Referee may otherwise direct if he is of the opinion that intimate personal or financial circumstances may have to be disclosed or that considerations of public security are involved.

(7) The decision of the Referee shall be in writing and signed by him, and he shall record the reasons for his decision; a copy of the decision and reasons shall be sent as soon as may be practicable to the Department, the claimant and to any other person appearing to the Referee to be interested.

PART III

MISCELLANEOUS

Suspension of benefit

11. Subject to the provisions of regulation 13(2), where it appears to the Department that a question has arisen whether—

(*a*) the conditions for the receipt of benefit payable under an award are or were fulfilled; or

(*b*) an award ought to be revised following a review in accordance with the provisions of these regulations,

it may direct that payment of sums on account of benefit shall be suspended in whole or in part until that question has been determined.

Requirement to repay overpaid benefit

12.—(1) Where benefit is or has been paid in pursuance of a decision which is reversed or varied on appeal, or is revised on a review, then, subject to paragraph (2), the decision given on the appeal or review shall require repayment to the Department of any benefit which was paid in pursuance of the original decision to the extent to which it—

(*a*) would not have been payable if the decision on the appeal or review had been given in the first instance; and

(*b*) is not directed to be treated as paid on account of the benefit awarded by the decision on appeal or review, or as having been properly paid.

(2) A decision given on appeal or review shall not require repayment of benefit paid in pursuance of the original decision in any case where it is shown to the satisfaction of the determining authority that in the obtaining and receipt of the benefit the person entitled, and any person acting for him, has throughout used due care and diligence to avoid overpayment.

Payment of sums on account of benefit where appeal is pending

13.—(1) Subject to the provisions of these regulations, sums on account of benefit awarded shall be payable notwithstanding that an appeal against the award is pending and subject as aforesaid, shall be treated as having been properly paid and shall not be recoverable under the provisions of these regulations or otherwise.

(2) Where notice of an appeal by the Department to the Referee is given or sent to the claimant within 21 days of the date on which the Department received the record of the decision of the tribunal, payment of sums on account of benefit to which the appeal relates shall be suspended until the appeal has been determined.

Recovery of sums required to be repaid

14. Any sum which a person is required to repay under the provisions of this Part may, without prejudice to any other remedy, be recovered by means of deductions from any other sum on account of benefit payable to that person or from benefit payable to him under the Social Security Act, the Industrial Injuries and Diseases (Northern Ireland Old Cases) Act 1975(**c**) or the Social Security Pensions (Northern Ireland) Order 1975(**d**).

Review of decisions involving payment of benefit

15.—(1) Where on review a decision is revised so as to make sums on account of benefit payable, the decision given on the review shall have effect as if a claim had been made on the date of the application for the review or from such earlier date (not being earlier than the date from which benefit would have become payable if the earlier decision had resulted in an award) as the determining authority may consider reasonable in the circumstances.

(2) For the purposes of this regulation, where a decision is reviewed at the instance of the Department, the date on which it was first decided by the Department that the decision should be reviewed shall be deemed to be the date of the application for the review.

Overpaid benefit to be treated as properly paid where additional supplementary benefit would otherwise have been payable

16.—(1) Where—

(*a*) by a decision given on appeal or review it is decided that benefit for any period was not payable and but for this regulation repayment thereof would be required; and

(*b*) the Supplementary Benefits Commission for Northern Ireland certify that the claimant or some other person would have been paid supplementary benefit additional to that which was paid for that period had there been no overpayment of benefit,

the decision on appeal or review shall direct that benefit overpaid shall be treated as properly paid to the extent of the additional amount shown in the certificate.

(2) In this regulation "supplementary benefit" means benefit under the Supplementary Benefits &c. Act (Northern Ireland) 1966(**e**).

(c) 1975 c. 17
(d) S.I. 1975 No. 1503 (N.I. 15)
(e) 1966 c. 28 (N.I.)

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 1st December 1975.

(L.S.) *C. G. Oakes*
Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the regulations but is intended to indicate their general purport.)

These regulations deal with the determination of questions relating to interim benefit under the Child Benefit (Northern Ireland) Order 1975.

Part I of the regulations relates to their citation, commencement and interpretation and also deals generally with rights of appeal and the circumstances in which a decision may be reviewed. Part II deals specifically with adjudication by a tribunal and the Referee and the procedural matters relating thereto. Part III contains miscellaneous provisions relating to the payment of benefit and the payment and repayment of benefit following an adjudication.