

Ombudsman's Determination

Applicant	Mrs R
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS Business Services Authority (NHS BSA)

Outcome

1. I do not uphold Mrs R complaint and no further action is required by NHS BSA.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs R complains that she is entitled to a pension from the Scheme for the period between August 1971 and September 1978.

Background information, including submissions from the parties

4. Mrs R contacted NHS BSA asking to take her Scheme pension. NHS BSA subsequently sent a letter to Mrs R confirming that it was unable to trace any pension entitlement for her prior to 23 June 2008.
5. On 3 July 2015 NHS BSA sent a letter to Mrs R, but it was addressed incorrectly. NHS BSA confirmed that a refund of £144.88 was paid to her for the period of membership from 2 August 1971 to 27 March 1974. It also confirmed that there are two further periods of employment for which a refund of contributions has not yet been paid. NHS BSA included form RF12 requesting that Mrs R complete and return it in order to claim her refund.
6. Mrs R complained through the Scheme's internal dispute resolution procedure (**IDRP**). She said that NHS BSA had not provided her with enough evidence to show that she accepted a refund of contributions for her Scheme membership from 2 August 1971 to 27 March 1974. She further complained that she had no recollection of receiving a refund and requested a copy of the application form, (**AW12**), she would have signed at the time showing that she had requested a refund.
7. The stage 1 IDRP decision was sent by NHS BSA on 30 September 2015. NHS BSA said a refund of £144.88 was paid in respect of Mrs R's membership from 1971 to

1974 and that it would only have paid a refund when it had received a completed AW12 form. NHS BSA also said it does not retain the forms once a refund has been paid, so it is unable to send Mrs R a copy of the completed form.

8. NHS BSA said that it has records showing two further periods of membership for Mrs R in the 1970's, for which a refund of contributions has not been paid to her. These are as follows:-
 - 30 December 1974 to 31 January 1978
 - 28 January 1978 to 23 September 1978
9. NHS BSA relied on The National Health Service (Superannuation) Regulations 1961 (As Amended). In particular Regulation 35, which, at the time, stated a member who had ceased to pay contributions needed to have accrued at least five years membership in order to have their pension rights preserved. Further, NHS BSA said that as Mrs R's employment was less than five years she was ineligible to receive a preserved pension, so her contributions were refunded. Therefore, NHS BSA is unable to add the period from 1971 to 1974 to her accrued benefits in the Scheme.
10. With respect to the period of membership from 1974 to 1978, NHS BSA said that a refund remains outstanding and that it will wait to receive Mrs R's AW12 form before issuing a refund. NHS BSA partially upheld her complaint because the letter of 3 July 2015 was sent to an incorrect address.
11. Mrs R disagreed with the outcome and invoked stage 2 of the IDRP. She said that she still has not been given any evidence that she requested to leave the Scheme. She further said that during the period of 1971 to 1978 she was still in active employment and would have no reason to opt out of the Scheme and take a refund.
12. The stage 2 IDRP decision was sent by NHS BSA on 30 November 2015. The decision maker provided documentation that confirmed a refund of £144.88 was paid to Mrs R on 24 April 1974. NHS BSA explained that section 34 of the document enclosed showed Mrs R's employer had informed NHS BSA that she was no longer employed by it from 27 March 1974 and attached the refund AW12 form that Mrs R had completed. NHS BSA said that it is unable to provide a copy of the completed AW12 form as it was destroyed once a refund had been paid.
13. NHS BSA further pointed out that on the left hand section of the document provided to Mrs R, the form was stamped in red with the initials 'R.C.' which relates to when a 'Refund of Contributions' has been paid. The reverse side of the document also had been stamped by The Department of Health on 24 April 1974 with its official stamp, with a handwritten note saying, 'Return of Contributions - £144.88.'
14. NHS BSA addressed Mrs R's complaint that she did not have a break in employment between 1971 and 1978. NHS BSA provided two further documents relating to periods of membership from 30 December 1974 to 31 January 1978, and from 28 January 1978 and 23 September 1978. The documents showed that Mrs R's

employer confirmed that her employment with it ended on 31 January 1978 by stamping and authorising the document. The same employer also completed a separate document to show that Mrs R re-commenced employment on 28 January 1978 and stamped the document to confirm her employment ended on 23 September 1978.

15. NHS BSA said that it wrote to Mrs R on 2 November 1979 asking her to apply for a refund of contributions in relation to her re-commenced NHS employment. NHS BSA have no record of having received a response to that letter and as Mrs R had less than five years qualifying pensionable membership her papers were filed away.
16. NHS BSA did not uphold Mrs R's complaint and enclosed a copy of the RF12 form for her to complete to claim the refund of contributions in relation to her Scheme membership from 30 December 1974 to 23 September 1978.
17. Following further investigation NHS BSA has confirmed that 10% tax was paid on the sum of £144.88 refunded to Mrs R.

Adjudicator's Opinion

18. Mrs R's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS BSA. The Adjudicator's findings are summarised briefly below:-
 - Mrs R contends that she had no knowledge of receiving the AW12 form and had never completed one. However, NHS BSA has provided documentation relating to Mrs R's Scheme membership from 2 August 1971 to 27 March 1974, which shows that the AW12 form was attached to the document. Therefore based on the evidence provided it is more likely than not that Mrs R completed an AW12 form and received a refund of contributions from NHS BSA.
 - Although Mrs R says she never received a refund of £144.88 in 1974, NHS BSA's procedure in 1974 was to pay all refunds of contributions by crossed Payable Order. Mrs R's Payable Order was not revoked and as such it would be reasonable to assume that a refund of contributions was paid and accepted by Mrs R.
 - The Adjudicator was satisfied that following the evidence submitted by NHS BSA, Mrs R did receive a refund of contributions for the period of 2 August 1971 to 27 March 1974. She said, this was because the available evidence does not support Mrs R's position that she did not apply and receive a refund.
 - NHS BSA have acted in accordance with Regulation 35 of The National Health Service (Superannuation) Regulations, 1961 (as amended), in paying a refund to Mrs R as she had completed less than five years pensionable service in the Scheme.

- Mrs R was employed for less than five years therefore under Regulation 35 she is unable to add the 1974 to 1978 service to her Scheme benefits accrued after June 2008.

19. Mrs R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs R provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs R for completeness.

Ombudsman's decision

20. Mrs R maintains that she never completed the AW12 form and she did not receive a refund of £144.88 in 1974. However, the evidence provided by NHS BSA clearly shows that a refund of contributions was paid to Mrs R in 1974 and Mrs R has not provided any satisfactory evidence to the contrary. For the reasons given by the Adjudicator, I find that it is more likely than not that Mrs R completed an AW12 form and received a refund of contributions from NHS BSA.
21. Mrs R has questioned why no interest or tax was paid on the sum of £144.88. NHS BSA has confirmed that 10% tax had been deducted from the refund in question. As I have seen no evidence to counter NHS BSA's claim in this regard, I do not consider that there are sufficient grounds for me to find any wrong doing on the part of NHS BSA .
22. Mrs R has said that Regulation 35 should not apply to her case as she only had a nine months break between March to December 1974. However, the Social Security Act 1973 which came into effect on 6 April 1975 provides that members had to have acquired at least five years qualifying service to qualify for preserved benefits. As Mrs R was employed for less than five years, NHS BSA has acted in accordance with overriding legislation in insisting that Mrs R is unable to treat the period of Scheme membership from 1974 to 1978 as part of her preserved benefits.
23. Accordingly, as Mrs R did not have five years qualifying service, the appropriate course of action is for her to complete the form RF12 and return it to NHS BSA, in order to receive a refund of contributions for the period of membership from 1974 to 1978.
24. Therefore, I do not uphold Mrs R's complaint.

Anthony Arter

Pensions Ombudsman

23 June 2017