

Ombudsman's Determination

Applicant	Miss K
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS Business Services Authority

Outcome

1. I do not uphold Miss K's complaint and no further action is required by NHS Business Services Authority.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Miss K's complaint against NHS Business Services Authority is that NHS Pensions refused her request for early payment of her deferred pension benefits. Miss K believes that she is entitled to claim her pension from age 55.

Background information, including submissions from the parties

4. Under regulation L1 of the National Health Service Pension Scheme Regulations 1995 (the **1995 Regulations**), a member who leaves pensionable employment before age 60, with a deferred benefit entitlement, will be entitled to receive their pension from age 60.
5. Under the 1995 Regulations, a deferred member will be entitled to receive their pension before age 60, if the Secretary of State is satisfied that he is suffering from mental or physical infirmity that makes him permanently incapable of engaging in regular employment.
6. The National Health Service (Pension Scheme and Compensation for Premature Retirement) Amendment Regulations 2000 (the **2000 Regulations**) amended regulation L1 with effect from 31 March 2000, to enable a deferred member - who left pensionable employment after 30 March 2000 - to elect to receive (reduced) pension benefits from age 50.

7. Miss K has three separate periods of membership under the Scheme. She completed her last period of service in March 1999. Miss K's preserved benefits are payable from age 60.
8. Miss K attained age 55 in March 2016. The same month, she applied for early payment of her pension under the Scheme.
9. Miss K says she has struggled financially since losing her long term partner - she was evicted from her home and is now living in her friend's caravan. Miss K says she tried to claim her pension early so that she could get back into rented accommodation.
10. Miss K asserts that she paid into the Scheme based on her understanding that the benefits would be paid to her when she needed them.
11. NHS Pensions says Miss K is unable to claim her pension benefits early as she left the Scheme before the early retirement option was introduced. Consequently, this option is not available to her - it has no discretion over this.
12. NHS Pensions says Miss K is not eligible to claim her deferred pension until age 60 - unless its medical advisers agree that she is permanently incapable of undertaking any regular work due to ill-health. NHS Pensions says the regulations governing the Scheme have been applied correctly in her case.

Adjudicator's Opinion

13. Miss K's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS Business Services Authority. The Adjudicator's findings are summarised briefly below:
 - NHS Pensions cannot pay Miss K's benefits early unless it is accepted that she is suffering from mental or physical infirmity that makes her permanently incapable of engaging in regular employment.
 - The regulations were amended with effect from March 2000, to allow deferred members leaving service after 30 March 2000, the option of a reduced pension from age 50. These provisions do not apply in Miss K's case.
 - There is no such provision in the Scheme regulations that would allow NHS Pensions to pay Miss K's pension before age 60 under the circumstances she describes.
14. Miss K did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss K has provided further comments but these 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 Miss K for completeness.

Ombudsman's decision

15. Miss K says she was not informed that, if she ceased contributing to the Scheme after 2001, she would not be entitled to take her benefits before age 60. Mrs K says NHS Pensions ought to have notified her in advance of the 2000 Regulations coming into effect.
16. Miss K says she is unwell but she cannot afford to stop working.
17. The material date in this case is March 2000. That was the date on which the right to retire early was introduced, but only for those who were still in pensionable service at the time.
18. Miss K left the Scheme in March 1999, a year before the 2000 Regulations were made. Consequently, Miss K cannot take her pension before age 60 - unless NHS Pensions' medical advisers are satisfied that she is suffering from a medical condition that makes her permanently incapable of engaging in regular employment. Miss K left the Scheme well before the 2000 Regulations came into effect, and I can see no reason that NHS Pensions should have notified her of the impending changes.
19. Therefore, I do not uphold Miss K's complaint.

Karen Johnston

Deputy Pensions Ombudsman
28 February 2017