

Ombudsman's Determination

Applicant	Mr N
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent	Teachers' Pensions (TP)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by TP.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N is complaining that after consulting with TP he was told, on two occasions that although his ill-health pension would continue to be paid, if he took the employment positions he was considering, it would mean his Total Incapacity Benefit (**TIB**) would cease.

Background information, including submissions from the parties

4. Mr N was an active member of the Scheme until January 2013, when he took early retirement on ill-health grounds. TP concluded that he met the criteria to receive TIB.
5. No further action was taken until March 2015. Mr N wrote to TP and asked how his enhanced ill-health pension would be affected, if he took a new part time role. The role he was considering was a Patient Support Officer at the National Spinal Injuries Centre, working approximately 14 to 18 hours per week.
6. On 20 March 2015, TP wrote to Mr N and said that the post would be classed as 'gainful employment' and his ill-health pension would cease if he took the role. This was followed up with an email from TP on 2 April 2015, when it confirmed his ill-health pension would stop. The letter, incorrectly, refers to the Teachers' Pensions Regulations 1997.
7. Mr N raised a complaint on 10 June 2015, because he did not agree with TP's response.

He said the pension guidance available to him suggested there are exceptions when a member can take up employment and receive the enhanced ill-health pension. He said "The retired members: Your guide to your pension" explains that:

"Working after ill health retirement

If you're receiving ill health benefits, it's because you have been judged permanently medically unfit to teach. So if you return to teaching your ill health pension must stop immediately."

And

"Enhanced pension

If you're receiving an enhanced pension (Total Incapacity), and you intend to return to employment outside of teaching you must provide a certificate from a registered medical practitioner.

The medical practitioner must be satisfied that you still have the medical condition that caused your enhanced pension to be paid. The nature of your proposed employment will also help us decide whether or not the enhanced pension can continue to be paid."

8. TP wrote to Mr N on 23 June 2015, and said a person can return to work if they have a medical certificate, from a qualified medical practitioner, which verifies that their health remains 90% impaired, for the ill-health enhanced pension to continue to be paid.
9. No further action was taken until 9 July 2015, when Mr N considered applying for another part time job (around 18 hours per week) with the Essex Coalition of Disabled People. He queried again whether this would affect his ill-health enhanced pension. He provided TP with a letter from his doctor which confirmed that the medical condition, which had led to his teaching role ceasing, had deteriorated.
10. TP responded on 23 July 2015, and said that although Mr N had provided a letter from a medical practitioner, the number of hours he intended to work would be classed as gainful employment. Meaning his TIB would cease if he chose to take up the role.
11. On 10 August 2015, Mr N made a complaint to the Department for Education (**DfE**), because he did not agree with the decision TP were making.
12. DfE responded to Mr N's complaint on 22 September 2015. It explained that it was TP's role to decide if someone met the condition of being 90% impaired. DfE said it did not consider that the decision TP had reached was unreasonable. It explained all the information was set out in the Teachers' Pensions Regulations 2010 (**the Regulations**).

13. Mr N remained dissatisfied so sought legal advice. He also approached the Pensions Advisory Service. The matter was not resolved so Mr N brought his complaint the Pensions Ombudsman for an independent review.

Adjudicator's Opinion

14. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by TP. The Adjudicator's findings are summarised briefly below:-
- Under the Regulations TP have delegated authority to make the final decision whether Mr N's TIB will continue, if he took up new employment.
 - Section 67(3) of the Regulations states that if a person is able to provide TP with a certificate from a medical practitioner which confirms the person still satisfies the 90% impairment test the person may be able to engage in employment.
 - Mr N provided a certificate which said the medical condition that led to him receiving the TIB, had deteriorated. However, TP said that his TIB would cease, because it did not consider he was 90% impaired to carry out any work. TP did not provide a detailed explanation why it was holding more weight to the type of roles Mr N was considering as opposed to the medical certificate. TP should have provided this to Mr N.
 - There was no financial loss in this case because there was no guarantee Mr N would have been successful in getting the roles. It was also his ultimate decision to not take the job when he was informed his TIB would cease. He made the decision not to take the roles and to continue receiving the benefits.
15. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
16. Mr N provided his further comments which do not change the outcome. Mr N requested that the following points be addressed:-
- It does not say in the Regulations that TP can look at the number of hours a person is planning on working in order to make the decision whether a person is 90% impaired. Therefore, Mr N believes they are not entitled to do so;
 - If "any other form of employment" is not defined in the Regulations it should not be assumed that this includes gainful employment. The term should have no bearing on the reading of the Regulations; and
 - Mr N said he was very confident that he would have been successful in getting one of the job roles. Therefore, he argues that he has suffered a financial loss. He offered to try and obtain further information from the potential employers but I do not consider this would affect the outcome to the complaint.

17. TP accepted the Adjudicator's Opinion and provided a more detailed explanation as follows:

"... the regulations require a total incapacity pension to cease where a person's ability to carry out any work ceases to be impaired by more than 90% and is likely to be impaired by more than 90% permanently. In these circumstances the pension ceases on the date [on] which they engage in any other form of work. An exception is where they provide a certificate from a registered medical practitioner that their ability to carry out any work continues to be impaired by more than 90% permanently and that the Secretary of State agrees.

The fact that [Mr N] felt well enough to be able to work part time for either 14 or 18.5 hours per week means that his ability to carry out any work cannot be impaired by more than 90% and cannot be considered likely to be impaired by more than 90% permanently. This in itself is sufficient reason to reject his appeal. As for the medical certificate from [Mr N's] GP, although it states that his condition is deteriorating, it does not state that he is incapable of any work, because patently this is not the case. This also rather begs the question of whether the original decision to award Total Incapacity Benefits based on the medical advice supplied was originally correct.

In conclusion the purpose of ill health retirement provided in the Teachers' Pension Scheme is to pay a retirement pension to teachers whose health means they are no longer capable of teaching and in addition to pay them an enhanced pension if they are incapable of any work. To come to any conclusion other than to reject [Mr N's] appeal would, in our submission, be perverse."

18. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

19. Mr N remains dissatisfied with the decision TP have made that his TIB would cease if he took up part time employment that would consist of working around 14 to 18 hours per week.
20. It may help if I begin by explaining it is not my role to make the decision as to whether Mr N is 90% impaired. My concern is with the decision making process that TP have used. For example, whether TP took into consideration all the relevant information when coming to the conclusion that Mr N would no longer be eligible for TIB if he could work 14 to 18 hours per week.

21. The issues for consideration include whether the relevant rules have been correctly applied, whether appropriate evidence has been obtained and considered and whether the decision is supported by the evidence. If the decision making process is found to be flawed, the appropriate course of action is for the decision to be remitted back to TP to reconsider.
22. The purpose of TIB is to provide a person with an income, because their ability to carry out any form of work is impaired by 90%. The ultimate decision is delegated to TP to decide whether a person's TIB should continue to be paid, if they seek employment.
23. Mr N provided TP with a medical certificate which said his health had deteriorated. If a person is able to provide a medical certificate that says their ability to carry out any work continues to be impaired by 90%, then they may be able to take on certain roles, and continue to receive TIB, but the decision is with TP. In Mr N's case the certificate did not say he was unable to carry out any work. It said his health had deteriorated.
24. TP took into consideration the job roles and the medical certificate. It came to the conclusion that if Mr N could carry out a part time job of 14 to 18 hours per week then he could not be classed as 90% impaired. I consider it is reasonable that TP have taken into consideration the number of hours Mr N intended to work. Although the Regulations do not specify the number of hours a person can undertake before being classed as less than 90% impaired it is a matter of fact that 14 to 18 hours of work a week equates to around 35% to 46% of a standard 39 hour working week. Therefore, TP's decisions that Mr N cannot be classed as 90% impaired if he undertook such employment does not seem unreasonable.
25. I believe the decision TP have made is reasonable having taken into account all of the relevant evidence.
26. In the response Mr N provided, he disputed the Opinion and said that he had suffered a loss due to the decision TP made. He said he was confident that he would have been successful in getting offered both of the roles. It is true that Mr N may have been successful in obtaining the roles, but he decided not to take them when he was informed the TIB would cease. Mr N could have taken the roles regardless but he made the decision not to do so.
27. I do consider that TP could have provided Mr N with a more detailed explanation as to how it reached its decisions, but following the Opinion, I consider the response adequately explains the method it used in making its decision. This has been shared with Mr N and I do not consider any further action is required by TP.

PO-17068

28. Therefore, I do not uphold Mr N's complaint.

Karen Johnston

Deputy Pensions Ombudsman
27 November 2017

Appendix

The Teachers' Pensions Regulations 2010

65 Total incapacity benefits

- (1) This regulation applies where-
 - (a) an ill-health pension becomes payable to a person (P) because P satisfies Conditions 1, 2 and 3 set out in paragraph 3 of Schedule 7 (Case C: ill-health retirement), and
 - (b) P satisfies Conditions A and B.
- (2) P satisfies Condition A if P's ability to carry out any work is impaired by more than 90% and is likely to be impaired by more than 90% permanently.
- (3) P satisfies Condition B if immediately before satisfying Condition A-
 - (a) P was in pensionable employment,
 - (b) P was paying contributions under regulation C9 of TPR 1997 or regulation 19 (election to pay contribution by a person serving in a reserve force), or
 - (c) P was taking a period of non-pensionable sick leave, a period of non-pensionable family leave or a career break which, in every case, followed on immediately after a period of pensionable employment.
- (4) A total incapacity pension is payable to P from the entitlement day.
- (5) Except as otherwise provided in these Regulations, the total incapacity pension is payable for life.
- (6) Where P is a pre-2007 entrant, a total incapacity lump sum is payable to P on the entitlement day.
- (7) The annual rate of the pension and the amount of the lump sum are to be calculated in accordance with regulations 66 (annual rate of total incapacity pension and amount of total incapacity lump sum).
- (8) The entitlement day is the date on which the ill-health pension mentioned in paragraph (1) becomes payable to P.

67 Cessation of total incapacity pension

- (1) A total incapacity pension ceases to be payable if a person (P) if P's ability to carry out any work ceases to be impaired by more than 90%.
- (2) Paragraph (1) does not apply if P has reached-
 - (a) where P is a pre-2007 entrant, the age of 60, or
 - (b) where P is a person with mixed service or a 2007 or later entrant, the age of 65.
- (3) For the purpose of Paragraph (1), P's ability to carry out any work is to be treated as ceasing to be impaired by more than 90% on the earliest of the following-
 - (a) the date on which P enters employment in a capacity mentioned in Schedule 2 (pensionable employment);
 - (b) the date on which P engages in work as a teacher (not being employment in such a capacity);
 - (c) the date on which P engages in any other form of work unless-
 - (i) P provide the Secretary of State with a certificate from a registered medical practitioner that, in the opinion of the practitioner, P continues to satisfy Condition A

PO-17068

set out in regulation 65 (total incapacity benefits) despite engaging in such work,
and

- (ii) the Secretary of State determines that P continues to satisfy that Condition despite engaging in such work.