

Ombudsman's Determination

Applicant	Miss M
Scheme	Railways Pension Scheme (the Scheme)
Respondents	RPMI Limited (RPMI)

Outcome

1. Miss M's complaint is upheld and to put matters right the Scheme's Committee (**the Committee**), on behalf of the Trustees should reconsider its decision not to pay Miss M a dependant's pension.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Miss M's uncle has complained on her behalf because he is dissatisfied that the Committee has not agreed to pay Miss M a dependant's pension.

Background information, including submissions from the parties

4. Miss M's brother was in receipt of a pension from the Scheme when he passed away in April 2014. Following her brother's death Miss M's uncle applied to the Scheme for a dependant's pension for Miss M. Miss M was age 64 at the time.
5. In August 2016, RPMI wrote to Miss M's uncle and informed him that there was not sufficient financial evidence to show that Miss M met the criteria in the Scheme Rules for a dependant's pension to be awarded. It said "The Committee confirmed they would reconsider the application if further evidence was provided." RPMI informed Miss M's uncle that the Committee needed to be sure that Miss M was dependant on her brother 2 years before he died.
6. On 10 October 2016, Miss M's uncle sent RPMI a copy of Miss M's care plan dated September 2012 and letters addressed to her late brother dated January and February 2014, which informed him of Miss M's benefits increase. Miss M's uncle also provided RPMI with a copy of a letter that was addressed to Miss M dated May 2011 which evidenced that Miss M resided at the same property as her late brother, at the time. Miss M's uncle sent RPMI copies of these documents as he considered they evidenced Miss M's financial dependence on her brother, prior to his death.

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7. On 17 October 2016, Miss M's uncle complained at stage 2 of the Scheme's internal dispute resolution procedure about a separate issue.
8. On 21 December 2016, RPMI responded to Miss M's uncle's complaint about the separate issue but also said:

“The Committee considered all of the evidence in detail, and noted that they have a fiduciary duty to ensure that benefits are paid in accordance with the Scheme Rules and consequently it was agreed not to uphold your appeal under stage two of the Internal Disputes Resolution (IDR) procedure.

I appreciate that you will be disappointed with this decision, however the Trustee must ensure that benefits are only paid to beneficiaries who have an entitlement under the rules of the scheme.”
9. Dissatisfied with the response he received from RPMI, Miss M's uncle referred a complaint on Miss M's behalf, to this Office. As well as providing evidence that Miss M was financially dependent on her brother prior to his death, her uncle made the following further arguments:
 - Despite the fact that he has supplied evidence that Miss M was reliant on her late brother both financially and for her wellbeing, RPMI has continued to seek evidence which he does not have.
 - Since her brother's death Miss M has been placed in permanent care due to her mental condition.
10. In response to Miss M's complaint, RPMI provided a copy of the Scheme Rules which details the criteria for an individual to be eligible for a dependant's pension. RPMI also provided a copy of the minutes from the December 2016 meeting where the Committee considered Miss M's application for a dependant's pension.

Adjudicator's Opinion

11. Miss M's complaint was considered by one of our Adjudicators who concluded that further action was required by the Committee. The Adjudicator's findings are summarised below:-
12. The Adjudicator explained that the role of this Office in such disputes is to consider whether the procedure the Committee followed in exercising its discretion to determine whether or not a dependant's pension is payable, was reasonable. There are however, some well-established principles which the Committee were expected to follow in exercising its discretion. Briefly, it:
 - must take into consideration all relevant matters and no irrelevant ones;
 - must ask itself the correct questions;

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- must direct itself correctly in law (in particular, it must adopt a correct construction of the Rules/Regulations; and
 - must not arrive at a perverse decision.
13. A perverse decision is taken to mean a decision which no reasonable decision maker, properly directing itself could arrive at in the circumstances. If the Ombudsman is not satisfied that the above principles have been properly followed, he can ask the Committee to reconsider the matter. However, the Ombudsman will not replace the Committee's decision with a decision of his own, nor can he tell it what its subsequent decision should be.
 14. In this case, the Committee did not consider Miss M should receive a dependant's pension because it did not consider it had received sufficient evidence to prove that Miss M was financially dependent upon her brother for two years, prior to his death.
 15. The Rules of the Scheme defines an eligible dependant as:

“...any person (up to a maximum of 3) other than an Eligible Child (or person who was or is eligible to be considered as an Eligible Child) or Eligible Spouse who in the opinion of the Trustee was wholly or in large part dependant on the Member for 2 years immediately prior to the Member's death.”
 16. The minutes of the December 2016 meeting states:

“The Committee considered at length, all of the evidence before it and **DETERMINED** that there was not sufficient evidence to confirm Miss [M] was wholly or in large part dependant on Mr [M] for two years prior to his death. Therefore, it was agreed that the applicant did not meet the criteria for the Rules for the award of an eligible dependant's pension and **DECLINED** the application.”
 17. In the Adjudicator's opinion, this situation arose because the Committee did not take into consideration all relevant matters when it determined whether or not Miss M was financially dependent upon her brother prior to his death.
 18. The evidence provided by Miss M's uncle, such as her care plans, show that Miss M lived with her brother in 2012 and 2013. The care plans also confirmed that Miss M had not worked in gainful employment since the age of 18. The documents that Miss M's uncle had previously sent to RPMI also evidenced that Miss M had lived with her brother in 2011 and that prior to his death he dealt with her finances. Miss M's late brother's bank statements also show that he paid the utility bills in the home.
 19. In the Adjudicator's opinion, the Committee did not take into consideration all of the relevant matters to enable it to make an informed decision such as Miss M's living arrangements, her financial situation and her employment history, prior to her brother's death, when it considered whether or not Miss M met the criteria to receive

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a dependant's pension. Therefore, the Adjudicator considered that the Committee should revisit its decision on the payment of a dependant's pension to Miss M.

20. Following receipt of the Adjudicator's Opinion, RPMI replied and said that it was unable to give a response to the Opinion as it needs to be considered at the next Committee meeting which will be on 28 February 2018.
21. As this issue has been ongoing for quite a while and Miss M's uncle had previously stated that he would like to get the issue resolved as soon as possible, the Adjudicator considered that two and a half months was a long time to wait to find out whether or not the Committee accepted her Opinion. Therefore, the complaint was passed to me to consider.
22. I agree with the Adjudicator's Opinion.

Ombudsman's decision

23. This situation has been ongoing for almost four years. I appreciate it may be difficult to get all of the Committee members together due to their differing schedules, however, it is my view that it is unreasonable to wait until the end of February 2018 to establish whether or not the Committee would reconsider its decision to pay a dependant's pension to Miss M. Particularly as Miss M's uncle believes that Miss M had been denied a dependant's pension that he considers she is entitled to, for almost four years.
24. It is not clear from the reasons given whether or how Miss M's overall dependency was considered in light of the evidence submitted by her uncle.
25. It is my view that it would not be unreasonable for the Committee to hold a meeting earlier than 28 February 2018 to reconsider its decision not to award Miss M a dependant's pension.
26. Therefore, I uphold this complaint

Directions

27. Within 21 days of the date of this determination, the Committee should reconsider Miss M's application for a dependant's pension afresh, taking into consideration Miss M's financial, employment and living arrangements, prior to her brother's death and provide full reasons for its decision.

Karen Johnston
Deputy Pensions Ombudsman
12 January 2018