

Ombudsman's Determination

Applicant	Ms E
Scheme	NHS Pension Scheme
Respondents	Scottish Public Pensions Agency (SPPA)

Outcome

1. I do not uphold Ms E's complaint and no further action is required by SPPA.

Complaint summary

2. Ms E has complained that her application for ill health retirement has been declined.

Background information, including submissions from the parties

Background

3. Ms E was employed in the NHS until 8 August 2015. She applied for ill health retirement in April 2015. An application form AW8/MED was completed by an occupational health physician in July 2015. A summary of and extracts from the occupational health physician's report and other medical evidence relating to Ms E's case are provided in Appendix 1.
4. The relevant regulations are The National Health Service Pension Scheme (Scotland) Regulations 2015 (SSI2015/94) (as amended) (the **2015 Regulations**). Regulations 89 and 90 contain the conditions for payment of an ill health retirement pension. Extracts from the 2015 Regulations are provided in Appendix 2.
5. Briefly, the 2015 Regulations provide for two tiers of ill health retirement benefits; the Lower Tier and the Upper Tier. The conditions for payment of Lower Tier benefits are:-
 - The member has not attained normal pension age;
 - The member has ceased to be employed in NHS employment;

- The Scheme Manager¹ is satisfied that the member suffers from physical or mental infirmity as a result of which s/he is permanently incapable of efficiently discharging the duties of her/his employment;
 - The member's employment is terminated because of the physical or mental infirmity; and
 - The member claims payment of the pension.
6. The conditions for payment of Upper Tier benefits are that the Lower Tier conditions have been met and the member is "permanently incapable of engaging in regular employment of like duration". "Permanently" is defined as lasting until the member's prospective normal pension age. In Ms E's case, this is age 67.
 7. Ms E's application was declined by SPPA on the basis that it did not find that she was permanently incapable of efficiently discharging the duties of her NHS employment. This decision was informed by advice SPPA received from its medical adviser, **OH Assist**, (see Appendix 1).
 8. Ms E submitted an appeal on 18 November 2015. She submitted a report from a consultant neurologist, Dr Murray, dated 8 October 2015. Ms E also provided a copy of a "to whom it may concern" letter, dated 26 October 2015, from Dr Murray. This was in part typed and in part handwritten. Unlike the report, the letter was not electronically (or otherwise) signed by Dr Murray.
 9. SPPA sought further advice from OH Assist. It was provided with a report, on 14 December 2015, prepared by a different OH Assist doctor (see Appendix 1). The OH Assist doctor advised that the Lower Tier conditions were not met. SPPA declined Ms E's appeal.
 10. Ms E contacted Cumbernauld & Kilsyth Unemployed Workers Centre, now called Cumbernauld Poverty Action (**CPA**), for assistance in submitting a further appeal. Due to an oversight, CPA did not submit Ms E's appeal until October 2017. In support of the appeal, CPA submitted a further copy of the report and letter from Dr Murray (see Appendix 1).
 11. SPPA sought a further opinion from OH Assist. Another OH Assist doctor provided a report on 21 December 2017 (see Appendix 1). S/he concluded that the Lower Tier conditions were not met. SPPA declined Ms E's appeal.

Ms E's position

12. It is submitted on Ms E's behalf:-
 - Ms E's request for ill health retirement benefits was declined by SPPA because it decided or assumed that she would not suffer permanent incapacity.

¹ The Scottish Ministers

- Ms E had the right to appeal if supporting medical evidence was provided. Ms E contacted her consultant neurologist and provided copies of the relevant documents. This evidence was disregarded because the letter had been (*sic*) sent and signed electronically.
 - If there had been any doubt as to the authenticity of the evidence provided, SPPA had the ability to contact Dr Murray to verify the information provided.
 - Ms E suffers from memory loss, blackouts and disorientation, which will not improve. Her condition has deteriorated and she now has difficulty swallowing.
 - Ms E had to leave her employment because of her health. This put her in financial difficulties. She has, with assistance, managed to apply for sickness benefits but has had to borrow money.
13. Having been provided with an opinion by one of our Adjudicators, Ms E made the following further comments:-
- She had been advised that she could not be redeployed within any section of the NHS, including office or administration roles. Given the range of job types within the NHS, she feels that this confirms that she would not be capable of engaging in regular employment because of her health.
 - Her health has deteriorated significantly since she left employment and she has been referred back to the neurology department for further investigation. She has been advised that treatment options such as physiotherapy and CBT (cognitive behavioural therapy) are unlikely to help her and may make things worse. Her blackouts are increasing and she is struggling to swallow food.
 - She has been placed in the Support Group for Employment Support Allowance (**ESA**) and has been assessed as needing standard daily living and enhanced mobility support for Personal Independence Payment (**PIP**).

SPPA's position

14. SPPA has referred to the decisions given in response to Ms E's appeals and the medical advice it received in connection with the appeals. It notes that Ms E's representative has referred to the handwritten section of Dr Murray's October 2015 letter. SPPA says it contacted Dr Murray after receiving notification of Ms E's complaint to the Pensions Ombudsman (**TPO**). It says Dr Murray has confirmed that she dictated the typed part of the letter but has no knowledge of who provided the handwritten part. SPPA notes that Ms E's representative has suggested it should have confirmed that the letter had been written by Dr Murray. It says, had it done so, this would not have changed the outcome of her appeal.

Adjudicator's Opinion

15. Ms E's complaint was considered by one of our Adjudicators who concluded that no further action was required by SPPA. The Adjudicator's findings are summarised below:-

- Members' entitlements to benefits when taking early retirement due to ill health are determined by the scheme rules or regulations. The scheme rules or regulations determine the circumstances in which members are eligible for ill health benefits, the conditions which they must satisfy, and the way in which decisions about ill health benefits must be taken.
- In Ms E's case, the relevant regulations are Regulations 89 and 90 (see Appendix 2). In order to qualify for a pension under Regulation 89, Ms E had to satisfy the Lower Tier conditions. She could not satisfy the Upper Tier conditions if she did not satisfy the Lower Tier conditions. The Lower Tier conditions included the requirement that Ms E be considered permanently incapable of efficiently discharging the duties of her NHS employment. Permanently was defined as lasting until normal pension age which, in Ms E's case, was 67.
- The decision as to whether Ms E satisfied the Lower Tier conditions was for SPPA, acting on behalf of the Scottish Ministers, to make. It was a finding of fact; Ms E either satisfied the Lower Tier conditions or she did not. If she did, Ms E was entitled to a pension under Regulation 89.
- Given the nature of the decision it was being required to make, it was entirely appropriate for SPPA to seek medical advice. SPPA was not, however, bound by the advice it received from its medical advisers and should come to a properly considered decision of its own.
- That being said, SPPA was entitled to rely on the advice it received in reaching its decision unless there was a good reason why it should not do so or should not do so without seeking clarification. The Adjudicator explained that the kind of things she had in mind were errors or omissions of fact or a misunderstanding of the regulatory requirements on the part of the medical adviser. SPPA could only be expected to review medical evidence from a lay perspective; it was not expected to challenge a medical opinion. It might be expected to seek clarification if the opinion expressed by its own medical adviser was significantly different to the opinion(s) expressed by the member's own doctors; if the difference had not already been explained by its medical adviser.
- The advice which SPPA received from its medical advisers was that Ms E did not satisfy the Lower Tier conditions because her inability to discharge the duties of her NHS employment was not likely to be permanent.

- Having reviewed the advice provided by OH Assist to SPPA, together with the medical evidence submitted for Ms E, the Adjudicator said she had not identified any reason why SPPA should not have relied on the advice. There was agreement between the medical professionals as to the nature of Ms E's condition and the treatment which should be offered to her. The reports indicated that the OH Assist doctors had a clear understanding of the Lower and Upper Tier conditions and that permanently meant likely to last until Ms E's normal pension age of 67.
- Ms E and CPA had said that SPPA had disregarded the October 2015 letter from Dr Murray. SPPA was advised, at the time, that it was not possible to conclude that the handwritten part of the letter was from Dr Murray. The view expressed in this part of the letter was that Ms E was unlikely to be able to return to any employment before her normal pension age. This was significantly different to the views expressed by the OH Assist doctors. This was one possible situation where SPPA might be expected to seek clarification, rather than proceed in reliance on the advice from its own medical adviser. However, in Ms E's case, there was some doubt as to whether the view expressed in the letter came from Dr Murray.
- CPA had suggested that SPPA should have sought clarification from Dr Murray at the time if there was any doubt as to the authenticity of the letter. This would have been an appropriate approach to take. The Adjudicator acknowledged that the letter was not electronically signed by Dr Murray in the same way as her report to Ms E's GP was. It was also the case that the language used in the handwritten section of the letter was not comparable with the language used in the report. Nevertheless, she suggested that it would have been best practice to seek verification from Dr Murray, herself, before discounting the letter.
- SPPA sought verification from Dr Murray after Ms E's application to TPO. It had explained that Dr Murray had confirmed that she had dictated the typed part of the letter but did not know who provided the handwritten part. It was likely that Dr Murray would have said the same if she had been approached in 2015. On that basis, it could not be said that there was a significant difference of opinion between OH Assist's doctors and Ms E's treating physician. SPPA's failure to seek verification from Dr Murray in 2015 had not affected the outcome of Ms E's case.
- The Adjudicator said she had not identified any reason why SPPA should not have relied on the advice it received from the OH Assist doctors as to whether Ms E met the Lower Tier conditions.
- The Adjudicator also considered whether there was any maladministration on the part of SPPA. She noted that there had been a considerable delay between the first and second appeal decisions. However, this was not as a

result of any maladministration on SPPA's part. It had always responded to Ms E and CPA promptly.

16. Ms E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms E provided her further comments (see paragraph 13 above) which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Ms E for completeness.

Ombudsman's decision

17. The starting point for any case which concerns entitlement to a pension must be the relevant scheme's rules or regulations. In Ms E's case, Regulation 89 provides that, in order to be entitled to any ill health retirement pension, she must satisfy the Lower Tier conditions. These conditions are:-
 - She is qualified for retirement benefits and has not attained normal pension age;
 - She has ceased to be employed in NHS employment;
 - the Scheme Manager is satisfied that she suffers from physical or mental infirmity as a result of which she is permanently incapable of efficiently discharging the duties of her employment;
 - Her employment is terminated because of the physical or mental infirmity; and
 - She claims payment of the pension.
18. If Ms E satisfies these conditions, she would be entitled to a Lower Tier ill health pension. If, in addition, Ms E satisfied the Upper Tier conditions, she would be entitled to an Upper Tier ill health pension. The additional condition for an Upper Tier ill health pension is that the Scheme Manager is satisfied that Ms E suffers from "physical or mental infirmity as a result of which she is permanently incapable of engaging in regular employment of like duration".
19. The decision as to whether Ms E satisfies the Lower or Upper Tier conditions is for SPPA to make. The question before me is whether SPPA made its decision in a proper manner. In order to determine this, I have considered the evidence upon which the decision was based. I do not do so in order to come to a decision of my own as to whether Ms E is entitled to an ill health pension under Regulation 89; rather, I do so in order to determine whether the evidence used by SPPA was appropriate for the purpose and supports the decision it reached.
20. The evidence upon which SPPA based its decision consists of the initial application form, letters from Dr Murray and advice from its own medical advisers. SPPA's own medical advisers were of the view that Ms E was not permanently incapable of efficiently discharging the duties of her NHS employment. In other words, they did not

think that she satisfied the Lower Tier conditions. SPPA has accepted this advice and declined Ms E's application.

21. SPPA is entitled to rely on the advice it receives from its medical advisers unless there is a good reason why it should not do so and that reason must be obvious to a lay person. This would include, but is not limited to, errors or omissions of fact or a misunderstanding of the requirements of Regulation 89. SPPA cannot be expected to challenge a medical opinion. It can, however, be expected to actively review the advice and request further explanation where necessary.
22. The reports provided by SPPA's medical advisers indicate that they understood the Lower and Upper Tier conditions. There is no indication of any factual error or omission by the medical advisers.
23. The question has arisen as to whether there was a difference of opinion between SPPA's medical advisers and Dr Murray. If there is a difference of opinion between the member's own treating physicians and its medical advisers, I would expect SPPA to seek an explanation. However, in Ms E's case, it is not clear that such a difference of opinion did exist.
24. Ms E has referred me to the handwritten section of Dr Murray's letter of 26 October 2015. This section of the letter does, indeed, contain an opinion as to the likely future course of Ms E's condition which is at odds with the advice from SPPA's medical advisers. However, Dr Murray has said that she did not write this part of the letter.
25. I have no reason to think that Ms E submitted the letter in anything other than good faith. However, when Dr Murray, herself, has said she did not write that part of the letter, I do not find that it can be relied upon as representing her opinion. I agree that it would have been better to have clarified this with Dr Murray much earlier than SPPA did, but the failure to do so has not affected the outcome of Ms E's case. If SPPA had obtained clarification from Dr Murray, it would have been necessary for it to set aside this evidence because of the doubt over its provenance.
26. The main point of disagreement in Ms E's case relates to the view taken by SPPA's medical advisers that her incapacity was unlikely to be permanent. Regulation 90 defines "permanently" as lasting until Ms E's prospective normal pension age; that is, her 67th birthday.
27. Ms E has explained that her condition has deteriorated since leaving employment. She has also mentioned that she is in receipt of ESA and PIP. When assessing the decision-making process undertaken by SPPA, it is necessary to avoid applying hindsight. In other words, I assess the decision on the basis of the evidence which was available at the time it was taken and the expectation, at that time, as to the likely course of Ms E's medical condition. The fact that Ms E's condition may have deteriorated since does not, in and of itself, invalidate the views expressed in 2015 and 2017.

28. Nor does the fact that she has since been awarded ESA and PIP. The award of these state benefits might give an indication of the current state of Ms E's health but neither requires the recipient's incapacity to be permanent. It is for this reason, that the award of such benefits is not at odds with the views expressed by SPPA's medical advisers that it was likely that, with treatment, she would recover sufficiently before her 67th birthday to be capable of discharging her former NHS duties.
29. In summary, I do not find that there was any reason why SPPA should not have relied on the advice it received from its medical advisers in Ms E's case. Therefore, I do not uphold Ms E's complaint.

Anthony Arter

Pensions Ombudsman
11 March 2020

Appendix 1

Medical evidence

Form AW8/MED

30. On the form AW8/MED, SPPA's occupational health physician listed Ms E's diagnosed medical conditions as: non-epileptic attacks; non-specific neurological symptoms; and depression and anxiety. S/he then described Ms E's symptoms and current treatment. The occupational health physician listed the medical reports s/he had referred to, including reports from Ms E's GP, a clinical psychologist, consultant clinical neurophysiologists and a consultant neurologist. S/he concluded:

"Given the persistence of the above described symptoms, despite specialist input and lack of underlying diagnosis, it is very difficult to predict the likely future course. I would, however, anticipate that these symptoms are unlikely to resolve very soon."

OH Assist, 14 September 2015

31. The OH Assist doctor had been provided with copies of the AW8/MED and the medical reports listed by the occupational health physician. The OH Assist doctor set out the Lower and Upper Tier conditions at the start of her report. She expressed the view that the Lower Tier conditions had not been met. The OH Assist doctor accepted that Ms E was currently unfit for work and likely to remain so for a considerable period of time. She said:

"This assessment must take account of the potential for treatment to take place that will result in sufficient symptomatic and functional improvement for her to be fit for her normal duties before her 67th birthday. The evidence indicates that she has been offered treatment that has the potential to treat her symptoms with resultant functional improvement."

32. The OH Assist doctor suggested that, if Ms E wished to dispute her advice, further reports from a neurologist and neuropsychologist would be helpful.

Dr Murray, October 2015

33. In her October 2015 report to Ms E's GP, Dr Murray described Ms E's symptoms in detail. She summarised the content of the consultation she had had with Ms E and suggested changes to her medication. Dr Murray said she had not arranged to follow up but would be happy to provide advice in the future if needed.
34. The "to whom it may concern" letter, dated 26 October 2015, contained both typed and handwritten sections. The typed section said:

"[Ms E] has functional neurological symptoms and dissociative attacks which are disabling."

The handwritten section said:

"I dont [sic] think with [Ms E's] symptoms she will be able to return to any kind of employment before pensions age as there are no known cause and no cure and [Ms E] has all the symptoms and its [sic] just a case of trying to manage them I do not see [Ms E] ever making a full recovery to this illness so please take into account all of these factors for her pension only 1/3 of the population make some kind of recovery but with studies carried and [Ms E's] symptoms I personally dont [sic] think [Ms E] will ever be able to return to her duties as it is my opinion she wont [sic] be able to do any kind of work."

OH Assist, 14 December 2015

35. The OH Assist doctor began by setting out the Lower and Upper Tier conditions. She said she had considered the report and letter from Dr Murray, together with the evidence previously submitted.
36. The OH Assist doctor noted that Dr Murray had said, in her report to Ms E's GP, that Ms E's symptoms were common and could improve. She referred to the letter and noted that it was unsigned. She said it was not possible to conclude that the handwriting was that of Dr Murray. The OH Assist doctor noted that the diagnosis provided by Dr Murray was unchanged from the previous diagnosis. She explained what the recommended treatment was and referred to a study relating to its effectiveness. The OH Assist doctor noted that Ms E had twenty years in which to access and complete a course of treatment. She concluded:

"In this case, a course of talking therapy may need to be more prolonged, given the particularly wide range of symptoms and the long past history of depression, but I see no evidence to indicate that in this case the prognosis for work is for permanent incapacity for the current NHS role. Compliance with medical advice in this case is likely, in my view, to render her fit for her job. Therapy is likely to present no hazard to the individual as it comprises psychological treatment."

OH Assist, 21 December 2017

37. As with the previous OH Assist report, the doctor set out the Lower and Upper Tier conditions at the beginning of her/his report. S/he confirmed that s/he had seen a job description for Ms E's role and described the role as requiring significant time on her feet, elements of manual handling and could be emotionally challenging.
38. The OH Assist doctor listed the medical evidence considered. S/he explained that, because no new medical evidence had been submitted, Ms E had been invited to and agreed to submit a copy of her primary healthcare records. These records were provided by Ms E's GP for the sight only of the medical adviser.
39. The OH Assist doctor said the new evidence submitted confirmed that Ms E had significant ongoing symptoms and had been referred for psychological therapy. S/he noted that a psychiatric review had been requested by a senior psychological therapist. Ms E had been discharged from the psychological therapy services until

such time as any underlying psychiatric disorder had been adequately treated. The OH Assist doctor noted that an improvement in Ms E's psychiatric symptoms had been recorded in October 2017.

40. The OH Assist doctor concluded:

"It may be that there is more evidence to consider but I can only advise on what is presented to me. [Ms E] has been diagnosed with a functional neurological disorder and now appears to accept this diagnosis. She had begun to engage in appropriate therapy ... but this was deferred for assessment and management of her underlying psychiatric disorder.

The serial psychiatric reports describe a gradual improvement ... she remains under treatment and review by her treating psychiatrist. It is likely that [Ms E] will achieve a state of psychological well-being that will permit her to engage in specific treatment for her functional neurological disorder. As this therapeutic intervention has not yet commenced, it is not possible to determine the degree of effect it will have upon [Ms E's] symptoms and functional capability.

I would expect this intervention to be available to [Ms E], when her treating psychiatrist advises that the management of her ongoing mixed anxiety and depressive disorder is adequate. I do not anticipate that it would have a negative impact upon her well-being and the effects of the same would become clear in a matter of months. In the absence of evidence that this treatment has been exhausted or any specialist opinion to explain why it might not be effective I do not, yet, have evidence to suggest [Ms E's] current symptoms are likely to persist in the long term.

It follows I cannot be persuaded, even on the balance of probabilities, that she is permanently incapable of discharging the duties of her employment prior to her normal pension age in 20 years.

In the circumstances it is my opinion there is reasonable medical evidence that [Ms E's] health problems currently prevent her from discharging the duties of her employment and/or engaging in regular employment of like duration but no reasonable medical evidence that her medical condition will continue to prevent her from discharging the duties of her employment and/or engaging in regular employment of like duration."

Appendix 2

The National Health Service Pension Scheme (Scotland) Regulations 2015

41. As at 8 August 2015, Regulation 89 provided:

- “(1) An active member (M) is entitled to immediate payment of -
 - (a) an ill-health pension at Lower Tier (a Lower Tier IHP) if the Lower Tier conditions are satisfied in relation to M;
 - (b) an ill-health pension at Upper Tier (an Upper Tier IHP) if the Upper Tier conditions are satisfied in relation to M.
- (2) The Lower Tier conditions are that -
 - (a) M is qualified for retirement benefits and has not attained normal pension age;
 - (b) M has ceased to be employed in NHS employment;
 - (c) the Scheme Manager is satisfied that M suffers from physical or mental infirmity as a result of which M is permanently incapable of efficiently discharging the duties of M's employment;
 - (d) M's employment is terminated because of the physical or mental infirmity; and
 - (e) M claims payment of the pension.
- (3) The Upper Tier conditions are that -
 - (a) the Lower Tier conditions are satisfied in relation to M; and
 - (b) the scheme manager is also satisfied that M suffers from physical or mental infirmity as a result of which M is permanently incapable of engaging in regular employment of like duration.
- ...
- (5) In paragraph (3)(b), “regular employment of like duration” means -
 - (a) in the case of a practitioner or non-GP provider, ...;
 - (b) in any other case, where prior to ceasing NHS employment M was employed -
 - (i) on a whole-time basis, regular employment on a whole time basis;
 - (ii) on a part-time basis, regular employment on a part-time basis, regard being had to the number of hours, half days and sessions the M worked in the employment ...”

42. Regulation 90 provided:

- “(1) For the purpose of determining whether a member (M) is permanently incapable of discharging the duties of M's employment efficiently, the scheme manager must -
 - (a) have regard to the factors in paragraph (2), no one of which is to be decisive; and
 - (b) disregard M's personal preference for or against engaging in the employment.
- (2) The factors mentioned in paragraph (1)(a) are -
 - (a) whether M has received appropriate medical treatment in respect of the infirmity;
 - (b) M's mental capacity;
 - (c) M's physical capacity;
 - (d) the type and period of rehabilitation it would be reasonable for M to undergo in respect of the infirmity, regardless of whether M has undergone the rehabilitation; and
 - (e) any other matter the scheme manager thinks appropriate.
- (3) For the purpose of determining whether M is permanently incapable of engaging in regular employment of like duration as mentioned in paragraph (3)(b) of regulation 89, the scheme manager must -
 - (a) have regard to the factors in paragraph (4), no one of which is to be decisive; and
 - (b) disregard the factors in paragraph (5).
- (4) The factors mentioned in paragraph (3)(a) are -
 - (a) whether M has received appropriate medical treatment in respect of the infirmity;
 - (b) such reasonable employment as M would be capable of engaging in if due regard is given to -
 - (i) M's mental capacity;
 - (ii) M's physical capacity;
 - (iii) M's previous training; and
 - (iv) M's previous practical, professional and vocational experience,

irrespective of whether or not such employment is available to M.

- (c) the type and period of rehabilitation it would be reasonable for M to undergo in respect of the infirmity, regardless of whether M has undergone the rehabilitation, having regard to -
 - (i) M's mental capacity; and
 - (ii) M's physical capacity.
 - (d) the type and period of training it would be reasonable for M to undergo in respect of the infirmity, regardless of whether M has undergone the training, having regard to -
 - (i) M's mental capacity;
 - (ii) M's physical capacity;
 - (iii) M's previous training; and
 - (iv) M's previous practical, professional and vocational experience; and
 - (e) any other matter the scheme manager considers appropriate.
- (5) The factors mentioned in paragraph (3)(b) are -
- (a) M's personal preference for or against engaging in any particular employment; and
 - (b) the geographical location of M.

- (6) In this regulation -

“appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the infirmity, but does not include any treatment that the scheme manager considers -

- (a) that it would be reasonable for M to refuse;
- (b) would provide no benefit to restoring M's capacity for -
 - (i) discharging the duties of M's employment efficiently for the purposes of paragraph (2)(c) of regulation 89 before M reaches prospective normal pension age; or
 - (ii) engaging in regular employment of like duration for the purposes of paragraph (3)(b) of that regulation before M reaches prospective normal pension age; or;
- (c) that through no fault on the part of M, it is not possible for M to receive before M reaches prospective normal pension age.

“permanently” means until M attains M's prospective normal pension age; and

“regular employment of like duration” has the same meaning as in regulation 89.”

43. Regulation 15 provided:

“(1) This paragraph applies to a decision as to a person's health or degree of physical or mental infirmity that is required for the purposes of this scheme and, in particular, a decision required for the purposes of -

...

(c) regulation 89(2)(c) or (3)(b) (early retirement on ill health: active members);

...

(2) Where this paragraph applies to a decision, the scheme manager may require a person entitled or claiming to be entitled to benefit under this scheme to submit to a medical examination by a medical practitioner selected by the scheme manager.

(3) The scheme manager must also offer the person an opportunity to submit a report from the person's own medical adviser following an examination of the person by the medical adviser.

(4) In taking a decision mentioned in sub-paragraph (1), the scheme manager must take into consideration both -

(a) the report mentioned in sub-paragraph (3); and

(b) the report of the registered medical practitioner who carries out the medical examination mentioned in sub-paragraph (2).”