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SOCIAL SECURITY (DETERMINATION OF DISABLEMENT QUESTIONS) (JERSEY) ORDER 1974

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SOCIAL SECURITY (DETERMINATION OF DISABLEMENT QUESTIONS) (JERSEY) ORDER 1974

THE EMPLOYMENT AND SOCIAL SECURITY COMMITTEE, in pursuance of Articles 34 and 51 of the Social Security (Jersey) Law 1974, orders as follows –

Commencement [[see endnotes](#)]

1 Interpretation

(1) In this Order –

‘Law’ means the Social Security (Jersey) Law 1974;

‘Registrar’ means the Registrar appointed under Article 4 of the Social Security (Determination of Claims and Questions) (Jersey) Order 1974;

‘Tribunal’ means the Social Security Medical Appeals Tribunal.

(2) Any notice to a person under this Order may be given by sending it to the person at his or her ordinary or last-known address, but this paragraph does not limit any other mode of giving notice.

2 Medical boards

A person shall not act as a member of a medical board, in respect of any case referred to the board for determination, if –

(a) the person is or may be directly affected by that case; or

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- (b) the person has taken any part in such case as a medical assessor or as a medical practitioner who has regularly attended the claimant or to whom any question has been referred for examination and report or as an employer or as a witness.

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4 Notice of sitting and procedure of medical boards

- (1) Reasonable notice of the time and place at which a medical board will sit for the consideration of any case shall be given to the claimant and if, after such notice has been given, the claimant fails to appear at the sitting of the board, the board shall not proceed to determine the questions referred to it without the claimant's consent.
- (2) No person shall be entitled to be present during the consideration of any question by a medical board other than the claimant and any other person whom the medical board may, with the consent of the claimant, allow to be present as being a person who, in its opinion, is likely to assist it in the determination of that question.

5 Notice of decision of medical board

- (1) A medical board shall in each case record its decision in writing.
- (2) The record of the decision shall be signed by each member of the medical board.
- (3) The record of the decision shall include a statement of the medical board's findings on all questions of fact material to its decision.
- (4) Written notice of the decision of a medical board shall be given as soon as practicable to the claimant.
- (5) The notice of the decision shall contain a summary of the medical board's findings and information about the claimant's right to appeal against the decision in accordance with Article 7.
- (6) The record and notice shall each be in a form approved by the Minister.

6 Constitution of Social Security Medical Appeal Tribunal

- (1) There shall be constituted a Social Security Medical Appeal Tribunal, which shall comprise the following categories of members –

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- (a) a chairman and one or more deputy chairmen, being persons holding a qualification in law; and
 - (b) a panel of up to 8 members who are medical practitioners.
- (2) The members shall each be appointed by the States on the recommendation of the Minister made after consulting the Jersey Appointments Commission established by Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005.
- (3) A member of the Tribunal shall hold office for such period as is specified in his or her appointment and after expiry of such period is eligible for re-appointment for such period as is specified in his or her new appointment.
- (4) A member may continue in office, after the expiry of his or her term of office, for the purposes of completing any proceeding that the member has begun to hear before the expiry of the term of office.
- (5) A member of the Tribunal shall cease to hold office on resigning in writing delivered to the Minister.
- (6) Any member of the Tribunal shall cease to hold office –
 - (a) on becoming bankrupt;
 - (b) on the appointment of a curator of the member's property and affairs under the Mental Health (Jersey) Law 1969;
 - (c) on being received into guardianship under the Mental Health (Jersey) Law 1969;
 - (d) on ceasing to be qualified for membership in the category for which the member was appointed; or
 - (e) on being removed from office by the Royal Court, if the member is guilty of misconduct or has been unable to carry out his or her duties because of ill-health or other commitments for a continuous period exceeding 6 months.
- (7) A member of the Tribunal shall not be removed from office for any other reason.
- (8) For the purposes of hearing any appeal or reference to it under Article 34B or 34C of the Law the Tribunal shall consist of one person from the category of members mentioned in paragraph (1)(a) and two persons from the category of members mentioned in paragraph (1)(b), selected by the Registrar.
- (9) However, a person shall not hear any case if he or she –

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- (a) was involved in an earlier determination of the case;
- (b) is a doctor who has regularly attended the appellant or a member of the appellant's household; or
- (c) has any personal or pecuniary interest, whether direct or indirect, in the outcome.

7 Notice of appeal

- (1) An appeal by a claimant against a decision of a medical board under Article 34B of the Law shall be brought by giving notice of appeal to the Registrar within 14 days of receiving notice of that decision under Article 5.
- (2) However, a notice of appeal given more than 14 days after, but within 28 days of, receiving notification of the decision of the medical board, may be allowed with the consent of the chairman or a deputy chairman of the Tribunal.
- (3) A reference by the Minister to the Tribunal under Article 34C of the Law shall be brought by giving notice of the reference to the Registrar.
- (4) Every notice of appeal or reference given under this Article shall be made in writing to the Registrar on a form approved by the Registrar for that purpose, or in such manner as the Registrar may accept as sufficient in the circumstances of the case.

8 Procedure of Tribunal

- (1) The parties to the hearing shall be the applicant and the Minister and each party or any person acting on behalf of that party may make representations to the Tribunal.
- (2) The Tribunal shall sit in public unless the Tribunal considers it necessary to sit in private.
- (3) However, no person other than the Registrar shall be present while the Tribunal is considering its decision.
- (4) The Tribunal may adjourn the hearing from time to time as it thinks fit.
- (5) The Tribunal may, if it thinks fit, admit any duly authenticated written statement or other material as *prima facie* evidence of any fact or facts in any case in which it thinks it just and proper to do so.
- (6) The Tribunal may, if it thinks fit, call for such documents and examine such witnesses as appear to it likely to afford evidence relevant and

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material to the issue, although not tendered by either the applicant or the Minister.

- (7) If, after notice of the hearing has been duly given, the applicant or the Minister fails to appear at the hearing, the Tribunal may proceed to determine the matter notwithstanding the absence of both or either of them, or may give such directions with a view to the determination of the application as the Tribunal thinks just and proper.
- (8) The Tribunal may require any party to proceedings before the Tribunal under this Order or any witness in the proceedings to give evidence on oath and, for that purpose, the chairman or deputy chairman presiding over the Tribunal shall have power to administer an oath.
- (9) Where, in connection with the determination of any claim or question, there is before the Tribunal medical advice or medical evidence relating to the applicant that has not been disclosed to the applicant and, in the opinion of the chairman or deputy chairman, the disclosure to the applicant of that advice or evidence would be harmful to the applicant's health, such advice or evidence shall not be required to be disclosed to the applicant, but the Tribunal shall not by reason of such non-disclosure be precluded from taking it into account for the purpose of the review.
- (10) On hearing any matter under this Article, the Tribunal may confirm, reverse or vary the decision of the medical board and shall give its decision in public.
- (11) The decision of the majority of the members of the Tribunal shall be the decision of the Tribunal and there shall be a written record of the decision signed by the chairman or deputy chairman as the case may be which –
 - (a) includes the names of the Tribunal members;
 - (b) includes the reasons for the decision; and
 - (c) records any dissent and the reasons for such dissent,and the Registrar shall send a copy of such written record to the parties as soon as practicable after the review has taken place.
- (12) Where the Tribunal has made a decision adverse to the applicant, the applicant shall be advised that the decision on the facts is final.
- (13) Subject to this Article, the Tribunal may regulate its own procedure.

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10 Miscellaneous Provisions

- (1) Where in connection with the determination of any question specified in Article 34A(1) of the Law, there is before a medical board medical advice or medical evidence relating to the claimant which has not been disclosed to the claimant and, in the opinion of the chairman of the medical board, the disclosure to the claimant of that advice or evidence would be harmful to the claimant's health, such advice or evidence shall not be required to be disclosed to the claimant, but the medical board shall not by reason of such non-disclosure be precluded from taking it into account for the purpose of the said determination.
- (2) For the purpose of arriving at its decision or discussing any question of procedure at any sitting or hearing, a medical board shall, notwithstanding anything in this Order, order all persons, not being members of, or the person acting as clerk to the board, to withdraw from such sittings or hearing.
- (3) Any power given by this Order to extend the period during which anything is required to be done under this Order or to dispense with any of the requirements thereof may be exercised in any case, notwithstanding that the period during which the thing is required to be done has expired.
- (4) The claimant and any person admitted to the proceedings as being likely to assist a medical board have the right to be heard at the proceedings of the board.

11 Citation

This Order may be cited as the Social Security (Determination of Disablement Questions) (Jersey) Order 1974.