

Widow's Benefit - forfeiture rule where claimant unlawfully killed husband - modification of rule.

JGM/BC

Commissioner's File: CG/19/1985

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Region: London North

SOCIAL SECURITY ACTS 1975 TO 1986

CLAIM FOR WIDOW'S BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: ~~XXXXXXXXXXXXXXXXXXXX~~

Appeal Tribunal: Hackney

Case No:

[ORAL HEARING]

1. My decision is that the forfeiture rule as defined in section 1 of the Forfeiture Act 1982 applies in relation to the claimant's claim for widow's benefit made on 17 May 1984 but that she is relieved of the consequences of the rule under the power conferred on me by section 4(1A) of the said Act in relation to widow's pension accruing on or after the first payment day following 25 July 1986.

2. I held an oral hearing of this reference under section 4 of the Forfeiture Act 1982, at which the adjudication officer was represented by Mr P L Canlin of the Office of the Solicitor to the Department of Health and Social Security and the claimant was represented by Miss L D Ballard solicitor with Messrs Edward, Fail, Bradshaw and Waterson.

3. On 29 November 1983 the claimant's husband died as the result of being struck on the head by the claimant with a surgical-spirit bottle. She was charged with his murder and pleaded guilty to manslaughter but not guilty of murder and this plea was accepted. According to the speech in mitigation of sentence by her counsel her husband had frequently been drunk and beaten her and on the particular occasion had got out of his chair with a look that the claimant was familiar with as if he was about to attack her and that she had picked up this small bottle and struck him a blow which did not break the bottle; and that her husband had died partly because as the result of past consumption of alcohol his brain was shrunken so that the effect of the blow was severer than might otherwise have been expected. The claimant, who had been in prison on remand for part of the period leading up to her trial, was placed on probation for two years. The judge expressed himself as taking into account the fact that she had already been in prison for three months.

4. She claimed widow's benefit. There are in fact different kinds of widow's benefit. First there is widow's allowance, which is payable only for a period of six months following the death of the husband. Secondly there is widowed mother's allowance payable from the termination of widow's allowance for so long as there are relevant children. In the present case there were no such children. Thirdly there is widow's allowance which is payable in full from the termination of widow's allowance but only to those who are aged over 50

at the date of the husband's death (or the later termination of widowed mother's allowance) but at a reduced rate to those between the ages of 40 and 50 at that time. The claimant was aged 42 at the date of the death of her husband.

5. Where there has been however what is called in the Forfeiture Act 1982 an unlawful killing of the husband by his wife, the title to any kind of widow's benefit, and possibly also other benefits, is subject to the forfeiture rule. It is however, I think, clear from the decision of the Court of Session to be reported as an Appendix to decision R(G) 1/83 that it is not every unlawful killing (a term which includes murder, manslaughter and in Scotland culpable homicide) that brings into operation the forfeiture rule. As was said by Salmon LJ in Gray v Barr [1971] 2 QB 554 at page 581 "Manslaughter is a crime which varies infinitely in its seriousness. It may come very near to murder or may amount to little more than inadvertence, though in the latter case jurises convicts". Nevertheless it is a good working rule to assume that where there has been a conviction for manslaughter of one person by another then (without prejudice the relieving power) forfeiture rule will apply against that other, unless it is shown that it is a case where the rule should not apply.

6. I do not on the other hand regard the fact that the claimant pleaded guilty to manslaughter as concluding this point against her. If a person has been persuaded by her counsel, as I dare say this claimant was, that she is unlikely to be sent to prison, it is understandable that she should elect to plead guilty rather than go through the ordeal of recounting the matter in evidence. On the other hand I have to bear in mind that the presentation of the facts by her counsel in his speech in mitigation was naturally designed to present the facts in the best light from her point of view. Looking at that speech alone I might well have come to the conclusion that this was very close to being a case where a plea of self-defence would have been accepted by the jury if she had pleaded not guilty. On the other hand facts might in that case have been brought out that would have made it look very different. And I note that not only was the claimant at one time remanded in custody, and charged with murder, but that the judge specifically adverted to the fact that the claimant had been in prison as a factor taken into account by him in putting her on probation. I reached the conclusion (that I intimated to Miss Ballard at the hearing) that I could not treat this as a case in which I could hold that the forfeiture rule did not apply without, at all events hearing, what the claimant herself had to say about the matter. Miss Ballard intimated that the claimant did not wish to give evidence and accordingly I hold that the forfeiture rule applies.

7. I therefore have to consider to what extent the claimant is to be relieved of the consequences of the forfeiture rule. The power to relieve her from loss of benefit was first conferred by the Social Security Act 1986 amending section 4 of the Forfeiture Act 1982. Section 4(1C) of that Act as so amended empowers me to modify the effect of the forfeiture rule among other ways by providing that it applies in respect of benefit only for a specified period of time; while section 4(1D) however precludes any modification that would allow a person to receive any benefit to which the rule applies in respect of any period before the commencement of the subsection, viz. before 25 July 1986.

8. Mr Canlin accepted the proposition that in exercising the power of modification I was free to take into account that the claimant had already lost more than 2½ years of benefit by virtue of the forfeiture rule when the subsection came into force; and he submitted that the present was a case in which I could properly treat that as a sufficient loss of benefit and modify the rule so that it should apply only in respect of periods before 25 July 1986. I agree and give the decision above accordingly in relation to widow's pension.

9. Section 4(1E) empowers me to direct that this decision should apply to any future claim for benefit or advantages under enactments specified in the Act. Neither party asked me to exercise this power in relation to any benefit, though I specifically raised the matter. Accordingly this decision extends only to the widow's benefit that the claimant has already claimed.

(Signed) J G Monroe
Commissioner

Date: 9 April 1987