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Claimant was seriously ill after an operation.

Held that claimants about to enter hospital cannot be expected to make inquiries or to claim sickness benefit before incapacity begins. Claim allowed.

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1. My decision is that the claimant is not disqualified for receiving sickness benefit from 5th August, 1949 to 29th October, 1949 both days inclusive.

2. The claimant was incapable of work throughout this period, but she did not give notice of her incapacity to the Minister, or claim benefit, until 3rd November, 1949. The Local Tribunal were satisfied that from the commencement of her incapacity she was too ill to trouble about the matter before she did. The Insurance Officer points out that it is doubtful whether that is true of the latter part of her delay. That was due, I think, to inquiries, which she began when she felt well enough, as to her right to sickness benefit. The Insurance Officer accepts that during the period of these inquiries she may be regarded as having proved good cause for her delay. He does not, therefore, deny that good cause for the delay in giving notice, and claiming benefit, until 3rd November, 1949 has been shown.

3. The Local Tribunal, however, held that she must be disqualified for receiving benefit, because, although from the date when her incapacity began she was too ill to trouble about the matter, she knew that she was going to hospital, and should have made prior arrangements for claiming benefit. The claimant protests that she did not know she would be so seriously ill after her operation in hospital.

4. Apart from this, however, the view of the Local Tribunal seems to me to impose too high a duty on a claimant. Notice has to be given within three days from the date on which the claimant becomes incapable of work. It cannot be given in advance. (See the National Insurance (Claims and Payments) Regulations, 1948 [S.I. 1948 No. 1041], Regulation 15(2).) Simi-

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larly, claims for sickness benefit cannot be made until the claimant has become incapable of work. (See Regulation 11(2)(b) of the above-named regulations.)

5. I do not think that a claimant about to enter hospital can reasonably be expected to make arrangements for giving notice of incapacity, or making claims for sickness benefit, before the occasion for fulfilling those duties arises.

6. The question to be considered in determining whether or not a claimant has good cause for failure to give notice, or make a claim, before the date on which she does so is whether she has done all that she can reasonably be expected to do in the interval between the commencement of her incapacity and that date. (Compare Decision No. C.G. 207/49 (reported).)

7. The claimant is a married woman, who had elected not to pay contributions under the National Insurance Act, 1946, and believed that she was not entitled to sickness benefit. I do not agree with the suggestion that that fact alone would excuse her from her duty of making inquiries as to her rights, but I do not think that it was unreasonable for her not to make such inquiries before she became incapable of work. After she became incapable of work she did, I think, make those inquiries as soon as she reasonably could be expected to do so.

8. In the result, therefore, I am satisfied that the claimant has proved that there was good cause for failure to give notice of incapacity to the Minister, or claim benefit, before 3rd November, 1949.

9. I allow her appeal.

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