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Expression "where notice . . . has been given" in Regulations 11(1)(b) and 11(2)(b) of the Claims and Payments Regulations

*Held* to refer only to the occasion and manner (and not to the time) in which notice is to be given.

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1. My decision is that the claimant is disqualified for receiving sickness benefit from 23rd February, 1949 to 29th March, 1949, both dates inclusive.

2. The claimant's incapacity, due to influenza, commenced on 23rd February, 1949, but notice thereof was not given to the Minister until 2nd April, 1949. No actual claim for sickness benefit was made until 9th April, 1949 when medical certificates on the approved forms covering the whole period up to that date were submitted.

3. The local Insurance Officer decided that there was not good cause for the delay in giving notice of incapacity and imposed disqualification from 23rd February, 1949 to 5th April, 1949. His decision was upheld by the Local Tribunal. The National Farmers' Union now appeals on the claimant's behalf. Two questions arise (1) whether there was good cause for the delay ; (2) whether the period of disqualification should extend up to 5th April, 1949.

4. In order to avoid disqualification for delay in giving notice of incapacity, "good cause" must be shown to have existed throughout the whole period of delay. I do not think the claimant has shown this. Even if it is assumed that he was too ill in the initial stages of his incapacity to see to his insurance affairs, this state of things does not seem to have lasted until 2nd April. The claimant says that he was only in bed for two or three weeks. It is therefore evident that he could have given notice, at any rate by post, well before 2nd April. It is admitted in his grounds of appeal that if his doctor had given him his certificates weekly he would have been able to ask some of his visitors to deposit them in the local National Insurance Office. In law it is the claimant's responsibility to see that he gets his certificates ; the doctor is under no obligation to give them unless he is asked for them. Therefore it is plain that the claimant could and should have notified his incapacity earlier.

5. The truth may be that he did not know he was entitled to benefit : he told the Local Tribunal that he understood he would not be entitled until he had paid contributions for three years. In view of the wide publicity which has been given to the National Insurance Scheme and of the facilities for making inquiries, it is well settled that ignorance for one's rights or how to claim them cannot in itself amount to good cause for delay in giving notice or making a claim. His doctor has stated that he discussed with him whether he was entitled to benefit ; this discussion appears to have occurred on or before 21st March. It is therefore clear that the claimant was capable of considering the matter long before 2nd April. If he was uncertain he could have written to inquire from the local National Insurance Office.

6. In view of the above matters I do not think the fact that his wife was very busy and that he himself had his 200-acre farm to think about really affects the matter. The extra time and effort taken to obtain his certificates from his doctor, and to post them, or a note of inquiry to the local office would have been trifling. I therefore hold that there was not good cause for the delay within the meaning of the regulation.

7. The question regarding the period of disqualification involves close consideration of Regulations 11 and 15 of the National Insurance (Claims and Payments) Regulations, 1948 [S.I. 1948 No. 1041].

Regulation 15 says :

- “(1) If a person fails, on becoming or again becoming incapable of work, to give to the Minister written notice of that fact within the time prescribed in the following provisions of this regulation, he shall be disqualified for receiving sickness benefit in respect of any period more than three days before the date on which the notice is given.
- (2) The time within which a notice shall be given by any person for the purpose of the foregoing paragraph shall be the period of three days from the date on which that person becomes or again becomes incapable of work.”

8. Then follows a proviso extending the time if good cause for delay is shown. It is clear that in the absence of good cause for delay Regulation 15 prohibits the payment of sickness benefit in respect of the period more than three days before the notice of incapacity in any circumstances whatever. On the other hand the mere fact that notice of incapacity has been given does not enable benefit to be paid at all. It is also necessary that a claim should be made for it.

9. Regulation 11 says :—

- “(1) . . . if a person fails to make a claim for any benefit within the prescribed time . . . he shall be disqualified for receiving . . . in the case of sickness benefit—
  - (i) where a notice of incapacity has been given in accordance with the provisions of Regulation 15, payment in respect of any period more than 10 days, or
  - (ii) where no such notice has been given, payment in respect of any period more than three days, before the date on which the claim is made ; . . .
- (2) The prescribed time . . . shall . . . be . . . in the case of sickness benefit—
  - (i) where notice of incapacity has been given in accordance with the provisions of Regulation 15, the period of 10 days, or
  - (ii) where no such notice has been given, the period of three days, from the day in respect of which the claim is made . . . ”

10. The local Insurance Officer, in extending the disqualification period up to the fourth day before the date when the claim was made (9th April), appears to have construed the expression “ where notice of incapacity has been given in accordance with the provisions of Regulation 15 ” as meaning “ where notice of incapacity has been given within three days from the commencement of the incapacity.” This would perhaps be the most natural interpretation and would have the result that the claim in the present case would only be effective for the previous three days, instead of for the previous 10 days.

11. I think, however, that this is not the meaning that the regulation was intended to bear. If it were so, it would have the awkward practical result that once a claimant was out of time (without good cause) in regard to his

notice of incapacity, he would have to make a claim every three days, instead of every week as is normally done.

12. The expression in Regulation 11 "given in accordance with the provisions of Regulation 15" refers only to the occasion and the manner in which the notice is to be given ("on becoming or again becoming incapable of work" . . . "give to the Minister written notice of that fact") and does not refer to the time within which it is to be given.

13. Consequently in the present case the claim made on 9th April, would be retrospectively effective for 10 days (not counting Sundays), i.e., to 29th March inclusive. It is, however, prevented from operating in respect of 29th March because that day is more than three days before the date of notice of incapacity.

14. Subject to this adjustment in the period of disqualification the appeal must be disallowed.

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