

WIDOW'S BENEFIT

Late claim for widow's pension (age related)—claimant previously disallowed widow's benefit—ignorant of subsequent change in law entitling her to widow's pension (age related)

The claimant became a widow in 1961 at the age of 48. Under legislation then in force she was entitled to a widow's allowance for the 13 weeks following the date of her husband's death but not, being aged under 50, to a widow's pension.

Section 2 of the National Insurance Act 1970 amended the legislation and modified the conditions of entitlement to widow's benefit with effect from 5.4.71. From that date subject to making a claim for it the claimant became entitled to an age-related widow's pension. The Department mounted an extensive publicity campaign to draw attention to the change in the law and to attract claims.

The claimant claimed a retirement pension on 14.11.72 shortly before she reached the age of 60 which was brought to her notice that from 5.4.71 she had been entitled to an age-related widow's pension. Her claim for a retirement pension was treated as a claim for age-related widow's pension, but the insurance officer found that good cause for delay in making the claim was not established and awarded a widow's pension from 15.8.72 only.

The Commissioner accepted the claimant's evidence that the publicity campaign had passed her by.

Held by the Commissioner (who particularly emphasised that he was not here concerned with a late claim for a new benefit) that:

1. In this case it was wholly out of place to apply the principle that claimants who were ignorant of their rights had a duty to take reasonable steps to find out what they were. Whether a person has good cause for a late claim depends on the facts and circumstances of the particular case. There is no automatic short cut to the determination of the question of good cause and all the relevant facts must be considered (paras 6 to 9).
 2. The claimant had good cause for her failure to claim widow's pension before 14.11.72 (para 11).
 3. Widow's pension payable from and including 16.11.71 (the first pay-day following 14.11.71) (para 11).
 4. Widow's pension was not payable for any earlier period by virtue of Section 49(4)(c) of the National Insurance Act 1965 (paras 4 and 11).
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1. This appeal by the claimant succeeds. Her husband died on 21st June 1961, at which date she was aged 48. Widowhood is a contingency covered by the national insurance scheme, and she duly claimed widow's benefit. As she had not attained the age of 50 at the date of her husband's death, she was not under the legislation then in force entitled to a widow's pension, but only to a widow's allowance. That was payable, and paid, for the 13 weeks following the date of her husband's death.

2. Section 2 of the National Insurance Act 1970 effected a change in the law regarding entitlement to a widow's pension. Its effect, read in conjunction with subordinate legislation, was (i) that as the claimant had attained the age of 40 at her husband's death, she became entitled to a widow's pension with effect from 5th April 1971; but (ii) that such entitlement was conditional on a claim being made.

3. It was not until November 1972 that the claimant became aware of the change in the law. What happened was that on 14th November, in anticipation of her 60th birthday, she submitted a claim for a retirement pension. Receipt of this claim drew the Department's attention to the fact that she was not drawing a widow's pension, and they told her that her claim for a retirement pension would be treated as a claim for a widow's pension. On the claim being submitted to an insurance officer, he awarded a widow's pension from 15th August 1972, but imposed a disallowance for the period from 6th April 1971 to 13th August 1972. The disallowance was upheld by a majority of the local tribunal.

4. It is in my judgment plain that a widow's pension is not payable for the period 5th April 1971 to 13th November 1971, and I do not understand the claimant to question this. Section 49(4)(c), as amended, of the National

Insurance Act 1965 operates as an unqualified bar to the payment of benefit for any period more than 12 months before the date of claim. There is no escape from, or way round, this unambiguous provision. Quite different considerations however apply to the period from 14th November 1971 onwards. If the claimant establishes that she had good cause for not claiming before 14th November 1972, the effect of the statutory provisions is that benefit is payable from the first pension pay-day following 14th November 1971.

5. A majority of the local tribunal concluded that the claimant had failed to prove good cause as above, but gave no reasons for their conclusion. The dissenting member gave his reasons for reaching an opposite conclusion, and with these reasons I am in agreement.

6. In his submission to the local tribunal the local insurance officer pointed out that the claimant attributed her failure to make an earlier claim to widow's pension to the fact that she was unaware of her right to it, and he commented as follows:—

“The Commissioner has held on many occasions that a claimant's ignorance of the law and his rights and duties thereunder does not, in itself, constitute good cause for his failure to claim within the prescribed time. It is the duty of claimants who are ignorant of their rights to take reasonable steps to obtain the necessary information, for example, by enquiring at a national insurance office.”

He added that in January 1971 the Department mounted an extensive publicity campaign (press, radio and television) to draw attention to the above change in the law.

The insurance officer concerned in the appeal to me adopts and endorses the local insurance officer's submission.

7. There are doubtless many cases arising out of a late claim for benefit in which the words quoted above are apposite. In the present case they seem to me wholly out of place. Whether a person has good cause for a late claim depends on the facts and circumstances of the particular case, and an *a priori* approach to the question—an approach which avoids considering the facts and circumstances but seeks to apply some fixed and automatic principle—can in many cases lead to injustice.

8. I am unable to understand how it can be suggested that the claimant ought to have made enquiries of the Department as to her revised rights under section 2 of the National Insurance Act 1970. When her husband died she claimed widow's benefit, and learned that her benefit rights were restricted to 13 weekly instalments of widow's allowance. It is not suggested that as a result of the publicity campaign in 1971 she became aware that she might have acquired additional rights, but nevertheless failed to ascertain what they were. I accept her evidence that the campaign passed her by. She told the local tribunal that she seldom watches television; that she listens mainly to music on the radio; and that she reads one provincial newspaper. I am not prepared to hold that her failure to note the information put out by the Department in its publicity campaign is inconsistent with her plea that she had good cause for her late claim.

9. This decision lays down no general principle, except that there is no automatic short cut to the determination of good cause cases: all relevant facts must be considered. I would particularly emphasise that I am not here concerned with a late claim for a new benefit. Section 2 of the National

R(G) 2/74

Insurance Act 1970 altered the conditions governing entitlement to a widow's pension, and it did this with retroactive effect. By that I mean that widows who had no right to a pension at their husband's death, and whose right to widow's benefit under the legislation in force prior to 5th April 1971 had been completely satisfied, were, under the amended legislation, given a right to claim further benefit as a result of having been widowed.

10. I should perhaps draw attention to the fact that in April 1973 another Commissioner (Mr. Desmond Neligan) had to consider an appeal arising out of a late claim to widow's pension in which the facts were very similar to those which I am now considering. His decision (not reported), given on Commissioner's file C.G. 15/1973, indicates that he reached a conclusion similar to my own. It seems possible that both insurance officers concerned in this case failed to have their attentions drawn to that decision.

11. My decision is (i) that the claimant had good cause for her failure to claim widow's pension before 14th November 1972; (ii) that widow's pension is payable from and including 16th November 1971 (being the first pension pay-day following 14th November 1971); but (iii) that such pension is not payable for any earlier period.

(Signed) Hilary Magnus
Commissioner
