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An estate was being administered by a solicitor. The executor gave no specific instructions as to death grant but assumed that the solicitor would ensure that a timeous claim was made

*Held* that good cause for late claim was not established. The position would have been different if the solicitor had been specifically instructed as to death grant.

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1. Our decision is that the claim for death grant is not allowed.

2. The claimant is the executor of the will of the deceased. The death occurred on the 5th June, 1951, but the claim for death grant was not made until the 14th August, 1951. It was then disallowed by the local Insurance Officer on the ground that the claimant had not proved good cause for his failure to make a claim within the prescribed time, namely, one month from the date of death. This decision was reversed by the Local Tribunal.

3. The claimant has made a number of statements in explanation of his delay in making the claim.

4. On the 15th August (the day after the claim was made) the claimant was asked on form B.D.13 for an explanation of the delay. His reply was that on the death he handed over to a solicitor the will of the deceased and all other documents "expecting him (the solicitor) to see to all my affairs". He added, "However, on Friday last, when I was signing the inventory, etc., I observed National Insurance death grant was not there. I trust you will find this satisfactory." The claimant's "grounds of appeal" from the decision of the local Insurance Officer were as follows :—

"The deceased's death was registered by the deceased's son and the appropriate certificate was issued by the Registrar of Deaths to him. He retained the certificate and I was under the impression that he claimed the funeral benefit. When my solicitor asked me about the death grant I made inquiries of the deceased's son. He sent me the Registrar's certificate and as executor I immediately lodged the claim. I consider there was good cause for my failure to lodge the claim in time "

(It will be observed that the claimant does not suggest that the son told him that he had claimed or would claim the death grant).

5. On the 18th October, 1951, on form L.T. 48, in answer to the Insurance Officer's appeal to the Commissioner, the claimant said that on the death of the deceased he handed "all available forms" to the solicitor. He adds "At that time I did not know the deceased's son was in possession of the necessary documents. I did not know what steps were to be taken and assumed Mr. D." (the solicitor) "would do this. As I work from 8 a.m. to 5 p.m. I could not inquire at the insurance office." He added that he was 63 years of age and found the new regulations about national insurance rather difficult to understand.

6. On the 19th November, 1951, in reply to certain inquiries made in connection with his appeal to the Commissioner, the claimant said that when he found death grant had not been claimed he wrote to the son who had registered the death, as when he (the claimant) had asked the solicitor about death grant he was shown the special certificate, etc., which the solicitor was using in another claim, and asked if he had received these. The son replied that he had left these in the deceased's home, but the claimant was unable to find them. The claimant added that no mention of the death grant claim was made by the solicitor at the time of instruction and that the solicitor was aware of the time limit, as on learning later that a claim had not been made, the solicitor advised the claimant to claim without delay, as he was already late and might have trouble.

7. The claim must be disallowed unless there was good cause for the claimant's delay in claiming and that good cause persisted up to the date of the making of the claim.

8. The burden of proving good cause rests upon a claimant, and if his explanations are inconsistent or otherwise unconvincing he does not discharge that burden. It might well be thought that this claim should fail on that ground alone for it is impossible to feel certain what the claimant alleges to be the cause of his failure to claim in time. On the one hand he says that he was "under the impression" that the deceased's son had made a claim or was making it, on the other he says that he did not know that the son was in possession of the necessary documents or what steps were to be taken to claim death grant and assumed the solicitor would do this.

9. But we will proceed to consider in this case whether either of the explanations for his delay given by the claimant affords ground for holding that he had good cause for failure to claim death grant before he did. "Good cause" means "some fact, which having regard to all the circumstances (including the claimant's state of health and the information which he had received and that which he might have obtained) would probably have caused a reasonable person of his age and experience to act (or fail to act) as the claimant did." (See Decision C.S. 371/49 (reported).)

10. "A claimant fails to show 'good cause' by alleging that he was ignorant of the requirements of the statutes or regulations or of his rights and duties thereunder, because it is the duty of the claimant, . . . if he is in ignorance or doubt, to make inquiry of those persons who are competent to give official information and instruction." (See Decision C.W.S. 3/48 (reported).)

11. The general rule is that a claimant is not entitled to leave to others the making of a claim and to take no further interest in the matter. (Compare Decision C.G. 207/49 (reported).)

12. In so far, therefore, as the cause of the claimant's failure to make his claim before he did was due to his impression that the son of the deceased was making a claim, the claimant does not prove good cause for his delay, because the claimant took no steps to verify that his "impression" was correct until after the prescribed time for making a claim had expired.

13. In so far as the cause of the claimant's failure to make his claim before he did was due to his reliance on his solicitor to do so on his behalf, notwithstanding that he had never mentioned death grant to his solicitor or referred to it in any way in the instructions which he gave him or the documents which he left with him, the claimant also fails to prove good cause, for in our opinion a reasonable man would not in such circumstances have failed to claim death grant himself or to make inquiries of some person competent to give him official information as to what needed to be done for such a purpose.

14. Had the claimant consulted his solicitor with reference to death grant and had the solicitor undertaken to deal with the matter different considerations would apply for the reasons explained in Decision C.G. 1/50 (reported).

15. In the circumstances of the present case we cannot hold, having regard to the prior decisions of the Commissioner, that the claimant has proved good cause for his failure to claim death grant before the 14th August, 1951, in respect of a death which had occurred on the 5th June, 1951.

16. The Insurance Officer's appeal must be allowed.

### MINORITY DECISION

1. I am in complete agreement with the statement in the decision of the majority of this Tribunal as to the unsatisfactory and in some respects conflicting explanations of the reasons for the delay in claiming given by the claimant. As I appreciated that when the case—as an appeal in Scotland—came before me as Deputy Commissioner, I requested that further inquiry as to the circumstances should be made and called attention to one matter that seemed to me to be of special importance by suggesting inquiry as to :—

“ whether the solicitor on receiving instructions from the claimant mentioned to him the matter of death grant ? ”

and asking whether the solicitor was :—

“ unaware of the time limit for claims ? ”

I assumed that one of the officials concerned with the appeal would see the solicitor or write to him, but it would appear that that was not done, for the terms of the further statement submitted indicate that the information was obtained from the claimant. If I had felt that I was free to give effect to my own opinion on the point of principle—as I regard it—raised by the case, I should have made a request for a statement to be obtained from the solicitor. I decided, however, not to do so at that stage because of the opinions expressed in a number of Commissioner's decisions in somewhat similar cases, and in view of those decisions reported the present appeal as one, in my opinion, suitable for consideration by a tribunal of three. Now that it has been dealt with in that way, and the opinion of the majority being what it is, further inquiry would serve no useful purpose. But if I had been considering the appeal alone I should not have been prepared to decide it without having before me a statement of what occurred at, in my opinion, the critical time from the person most competent to give it—the solicitor to whom the claimant *as executor* (according to his statement) gave instructions immediately after the death of the deceased *to act in "the affairs" of the executry*. I of course do not assume in the absence of a statement from the solicitor that a statement from him if obtained would support a finding of “ good cause ” for the delay in claiming death grant. On the contrary, it might show that no *general* instructions were given or accepted. But, *if in fact* the solicitor received and accepted general instructions to act as law agent in the executry and did not either call the attention of the claimant to the matter of death grant or himself make prompt inquiry about it, I feel that the general instructions so given and accepted should be regarded—or at least might be regarded—as absolving the claimant as executor from responsibility for a delay that otherwise, I agree, would rest on him. The claimant as executor would have failed of course to comply with the requirements of regulations but, as in my opinion his failure would have been avoided if he had received the guidance from his solicitor that he—assuming the accuracy of his statement—should have received and was entitled to rely on receiving, the failure of the solicitor to give that guidance would constitute good cause for the claimant's failure to make a timeous claim.

2. In prescribing the procedure for claims under the National Insurance Acts, in general, the aim of those responsible for framing the regulations was obviously to make the procedure as simple as possible, and claims for most of the benefits *are* a simple matter. As contrasted, however, with the position of an insured person entitled to sickness or unemployment benefit, the ordinary person appointed to act as executor is involved in matters of procedure quite unfamiliar to him. As regards death grant, it should be noted that he may not even be an insured person and may have taken little

interest in the matter of benefits under the National Insurance Acts, but in any event as an individual he would naturally assume that he need not concern himself with the possibility of death grant payable in the event of *his own* death. In a case like that of the present claimant living as a lodger in the house of the deceased there was, so far as appears, no reason for him to anticipate that he would ever be concerned with a claim for death grant until he learned of his appointment as executor. If the matter of death grant *then did* concern him, it could only do so as an asset of the executry estate possibly recoverable by him. No doubt, if the claimant knew or believed or thought it probable that death grant was payable to him as executor (or to anyone) in respect of the death, it would have been reasonable for him to mention the matter of death grant when he instructed the solicitor to act as his law agent in the executry, but in the case of an ordinary individual unaware of the time limit for claims for death grant, as the claimant probably was, and as executor instructing a solicitor to act for him in the executry, it would not naturally occur to him that a claim for death grant was a matter of urgency. On the other hand, it would be natural for him to assume that if death grant was likely to be claimable by him the solicitor would mention it and if it was a matter of urgency would at once take the necessary steps to recover the grant. That, in my opinion, would be the clear and normal duty of any solicitor accepting instructions to act for an executor at any time since death grant became payable under the provisions of Section 72 of the National Insurance Act, 1946.

3. If the claimant had not required to instruct a solicitor and either did not know that death grant was claimable or was unaware of the time limit for claims, the statement in the majority decision quoted from Commissioner's Decision C.W.S. 3/48 (reported) would clearly be applicable to the present case :—

“A claimant fails to show good cause by alleging that he was ignorant of the requirements of the statutes or regulations or of his rights and duties thereunder, because it is the duty of the claimant . . . if he is in ignorance or doubt to make inquiry of those persons who are competent to give official information and instruction ”

In other words, a claimant should seek advice at an office of the Ministry. But surely *only if* he was not in touch with a person who was, or should have been, even better qualified to give the necessary guidance than a clerk—possibly a not very experienced clerk—consulted at an office of the Ministry ? In that connection it is not irrelevant to refer to the cases, fortunately so far as I am aware not very numerous, in which claimants have alleged that they have been misled by officials consulted at local offices and to the fact that usually, and for reasons that are not difficult to appreciate, it has been impossible on inquiry to ascertain whether or not inaccurate information or advice was given. Accordingly, in my opinion—and particularly in view of the difficulties in relation to competing claims and other possibilities suggested by consideration of the regulations—a person in the position of the claimant acting as executor would be well advised, in my opinion, to leave the matter of death grant to the solicitor instructed to act in the executry and not to attempt to deal with it himself.

4. Now that I have explained and stressed what I consider to be the somewhat peculiar position in relation to death grant of an executor concerned with the estate of a deceased person as contrasted with that of an ordinary claimant for benefit and the fact that a claim for death grant, if

payable, is *just one* of the pieces of legal business to which a solicitor instructed to act for the executor—and not the executor personally—would naturally, in my opinion, give prompt attention without having his attention called to it. I refer to two Commissioner's decisions on delayed claims (C.G. 1/50 (reported) and C.G. 215/50). In the earlier case it was held that there was good cause for the delay, the claimant (acting as executrix) having consulted her solicitor about death grant and the solicitor having said that he "would see to it". It was pointed out in that decision that :—

"it does not follow from this decision that in a case in which the claimant is in no doubt about his legal right to the benefit and is not already consulting a solicitor about a matter closely connected with the claim . . . the claimant will be held to have proved good cause for delay if the solicitor fails to make the claim in time."

On consideration of the passage quoted it seemed to me that, although the present claimant was *not* "in doubt as to his right to the benefit", he had (according to his statement) given instructions to his solicitor which put upon any solicitor accepting such instructions a clear duty to ascertain whether death grant was claimable and, if it was, to see that it was made within the time prescribed by regulations. But a decision giving effect to that view in favour of the present claimant would have been in clear conflict with the later Commissioner's decision to which I have referred (C.G. 215/50). (It would also appear to be contrary to the principle applied in at least two earlier Commissioner's decisions, one relating to widow's benefit and the other relating to guardian's allowance—C.G. 176/49 and C.G. 177/49.)

5. In the case that was the subject of Commissioner's Decision C.G. 215/50 the claimant after registering the death of her husband "instructed a solicitor to wind up her husband's estate but did not specifically instruct the solicitor to claim death grant on her behalf". The claimant's contention that she had good cause for the delay because, in view of her general instructions, "she was under the impression that the solicitor would be attending to the claim for death grant as part of his duty in winding up the estate" was rejected, but it was observed that :—

"it is possible that in the course of time it will come to be generally recognised as being automatically part of a solicitor's duty in such circumstances to apply for death grant. But it is fairly common experience that at the present time solicitors do not regard it in that way . . ."

The basis of my dissent in the present case is that, contrary to the view expressed in the passage quoted, I can think of no ground (apart from special circumstances) that, in my opinion, would justify the failure of a solicitor *so instructed* to raise the question of a possible claim for death grant and in that connection to have the time limit for claims in view. Further, assuming that "in the course of time" it may be generally recognised as part of a solicitor's duty when instructed by an executor to have such a claim in view, I have difficulty in appreciating why that should not have been recognised *by solicitors* as soon as death grant became payable under the Act.

6. On that ground I am unable to concur in the decision of the majority, which is the decision of this Tribunal.

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