

**Late claim for increase for wife—
failure to notify re-marriage and enquire about title**

A widower claimed Retirement Pension when he was deemed to have retired at 5.7.58, but his pension was extinguished by earnings. He re-married but made no claim for an increase of pension for his wife and did not notify the Ministry of his change of status. Pension subsequently became payable regardless of earnings when he reached the age of 70 but it was not until six months later that he claimed the increase. He stated that he first learned that he was entitled to an increase when his wife called at the National Insurance office on another matter. He had had no means of knowing of his title except on the basis of a pamphlet he had received more than five years earlier when he was a widower. He contended that enquiry on 5th July 1958, or even when he married, about his right to such an increase would have been useless as he was not then entitled to a pension at all and when his pension became payable there was nothing to indicate that the pension paid to him was not the maximum to which he was entitled. He also contended that his duty to make enquiries arose only on these specific occasions, on each of which he had good reason for his failure to do so.

Held that good cause for his delay in claiming was not proved. It would have been reasonable to expect him to make enquiry about his potential entitlement on the occasion of his marriage and, when he began to receive his pension, to query whether the sum being paid to him took into account the fact that he was married.

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1. My decision is that from the 11th August 1959 to the 15th November

1959 (both dates included) the claimant is disqualified for receiving an increase of retirement pension in respect of his wife, on the ground that he failed to make a claim within the time prescribed and has not proved good cause for failure to make a claim before the 10th February 1960.

2. The claimant is a doctor of medicine. On the 5th July 1948 (the "appointed day" for all purposes of the National Insurance Act, 1946) he was already over 55 years of age. He thus became a "Late age entrant" into insurance; and by virtue of the National Insurance (New Entrants Transitional) Regulations, 1949 [S.I.1949 No. 352] as amended, he was deemed to attain pensionable age on the 5th July 1958 (but not earlier) and to retire immediately thereafter. At that time he satisfied the conditions of entitlement to retirement pension, but in fact no pension was payable because it was extinguished by earnings. At that date the claimant was a widower. On the 4th April 1959 he married, and he might then have claimed an increase of retirement pension in respect of his wife (subject to earnings); but he did not do so. On the 11th August 1959 the claimant attained the age of 70 years and his right to pension ceased to be affected by his earnings. Accordingly from the 17th August 1959 retirement pension was paid to the claimant, but as the authorities had not been notified of the claimant's marriage and were not aware of it, and no claim in respect of his wife had been made, no increase in respect of his wife was paid. It was only on the 10th February 1960 that the claimant claimed an increase in respect of his wife, as from the 11th August 1959.

3. The National Insurance (Claims and Payments) Regulations, 1948 [S.I.1948 No. 1041] as amended, prescribe certain time limits within which national insurance benefits are to be claimed. The prescribed time for claiming the benefit here in question is "three months from the date on which, apart from satisfying the condition of making a claim, the claimant becomes entitled thereto". Failure to claim within the prescribed time involves disqualification for receiving the benefit in question, unless the claimant can prove that there was good cause for the failure to make the claim before the date on which it was made: in which case the prescribed time shall be extended and disqualification avoided. (There is in any event an over-riding limit of six months, but this does not affect the present case.) In their application to the present case, the result of these provisions is that the claim having been made only on the 10th February 1960, no increase of pension in respect of the claimant's wife can be paid from any earlier date than the 16th November 1959, unless the claimant proves that there was good cause for his delay in claiming, in which event payment might be made from the 11th August 1959.

4. In Decision C.W.G.2/49 (reported) the Commissioner said— ". . . ignorance of an Act or regulations cannot constitute good cause for non-observance of their requirements. It is the duty of claimants who are ignorant of their rights or duties under the Act or regulations to take reasonable steps to obtain the necessary information, e.g. by enquiring at the local office of the Ministry of National Insurance". In Decision C.S.371/49 (reported) the Commissioner said—" . . . 'Good cause' means, in my opinion, 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."

5: The claimant was invited to state the reason for the delay in making

the claim. He replied (on the 14th February 1960) as follows— “. . . the reason why I did not make a claim for increase in retirement pension on 11.8.59 is because I had no idea that I was entitled to such an increase. I only learned of this entitlement when my wife called at your office the other day to enquire about the period covered by the quarterly payment. . . . To the best of my knowledge, I had no means of knowing that I was entitled to an increase upon remarriage except upon the basis of a pamphlet received before I became 65, which is now more than 5 years ago. As I was a widower then, I did not memorise details which were not applicable to me at the time. . . .”

6. The local insurance officer decided that the claimant had not proved good cause for the delay in claiming, and he awarded the increase of benefit only from the 16th November 1959.

7. On the 16th March 1960 the claimant appealed, and stated— “ When I submitted my claim for Retirement Pension in April 1957, I was a widower without any prospect of remarriage and therefore did not memorise the clauses in the pamphlet regarding increase in pension for a married man. Therefore, when I qualified for payment of a pension on reaching the age of 70 on 11th August, 1959, I had no idea that I was qualified for an increase in pension in virtue of my marriage on 4.4.59.”

8. The local tribunal, however, on the 26th May 1960, disallowed the claimant's appeal, and he then appealed to the Commissioner. At the claimant's request his appeal was heard orally. The claimant did not attend in person, but was represented by counsel.

9. It must be clearly understood that the statutory authorities cannot arbitrarily relax the provisions as to benefits not claimed in time. The regulations are peremptory as to disqualification; the only escape is by proving “ good cause ”. The present case presents some exceptional features, but the criterion which has to be applied is the one expressed in Decision C.S.371/49 and cited in paragraph 4 (above).

10. It was argued on behalf of the claimant that the explanations quoted in paragraphs 5 and 7 (above) did not mean that the claimant was unaware that an increase of pension in respect of his wife is normally available to a married male pensioner. The explanations quoted merely meant (it was said) that the claimant did not know that the amount of pension paid to him (50s. 0d. a week) was not the amount appropriate for himself and his wife. In the absence of explanatory evidence from the claimant himself I feel obliged to put my own construction upon the words which he wrote. In my opinion the natural meaning of the written words is that the claimant did not know that an increase of pension in respect of his wife is normally available to a married male pensioner. Ignorance of that simple fact is not what I should expect in a man of the claimant's age and experience, and I could not regard it as “ good cause ”.

11. It was argued further that the duty which is cast upon claimants by the Act and regulations is not so much a duty to know their rights and what has to be done in order to obtain them, but rather a duty to make inquiries (if the claimant does not already know). Applying that principle to the present case, it was said that the claimant's duty to inquire possibly arose only on three specific occasions, namely (1) on the 5th July 1958 (when he was deemed to attain pensionable age); (2) on the 4th April 1959 (when he married); and (3) on the 11th August 1959 (when he attained 70 years). Inquiry made on

the 5th July 1958 would have been useless for present purposes, since (in the circumstances) the claimant was not entitled to draw any pension at all. Inquiry made on the 4th April 1959 would have been useless, since again the claimant was not entitled to draw any pension at all. The claimant could not be expected to make inquiry on the 11th August 1959, because at that time he began to receive his pension, and there was nothing to indicate that the pension which he received was not the maximum which he was entitled to receive. Counsel for the claimant put it that the claimant was "misled" (albeit innocently) by the communication from the pension office intimating that pension of 50s. 0d. a week was payable. He was entitled (Counsel argued) to assume that this figure was correct, and on that assumption, there was nothing to inquire about.

12. It is true that there are various *dicta* in the Commissioner's decisions which describe the duty of a claimant as a duty to make inquiries, rather than as a duty to know the law. But I am not in the least satisfied that the duty to make inquiries arises only on the specific occasions when an inquiry (if made and correctly answered) would have revealed that the claimant was actually entitled to some benefit or additional benefit. Obviously, as a general rule, the question whether a person should have made inquiries will not arise except in the case where a benefit was in fact due (subject to the condition of making a claim) but there may be circumstances in which a person who is ignorant of his rights and duties in relation to insurance benefits may reasonably be expected to inquire into rights which are still *prospective* (e.g. on contemplating marriage). If the claimant had inquired upon the matter on the occasion of his marriage, he would have learned that his potential entitlement had been altered by marriage, even although (in the circumstances) nothing more was actually payable, by reason of the earnings rule. It would, in my opinion, have been reasonable to expect the claimant to make inquiry on the occasion of his marriage, but he failed to do so. Whether his delay in claiming was due to ignorance of a married pensioner's rights in general, or to ignorance of the precise amounts of pension rates, becomes, in the end of the day, immaterial: his delay was due to an ignorance which could have been remedied by proper inquiry made at a time when inquiry was appropriate. Insofar as it is contended that the claimant was misled (and thereby dissuaded from making inquiry) by the communication from the Ministry intimating that pension was to be paid at 50s. 0d. a week, it has to be borne in mind that this communication was one which awarded the claimant precisely what he had claimed. As he himself says, his original claim was made as a widower. There is no evidence that he ever intimated that his *status* was no longer that of widower, and there can be no suggestion that the Ministry ought to have been aware of this without intimation. In the circumstances, the term "misled" is not an appropriate one. When the claimant began, in August 1959, to receive payment of the pension which he had long previously claimed as a widower, I think it would have been reasonable for him to query whether the sum being paid to him took into account the fact that he was now married.

13. It was also argued on behalf of the claimant that a busy professional man could not find time, or be expected, to make inquiries about the national insurance benefits to which he might be entitled. If the suggestion is that less inquiry should be expected of educated and busy people than is expected of simple and uneducated ones, I cannot entertain it.

14. The representative of the insurance officer who attended the oral hearing pointed out that the claimant (with other "late age entrants") had

in fact been given, at different times, a good deal of information about his position and rights under the national insurance scheme, so that it was not in fact accurate to say (as the claimant did) that he had no means of knowing that he was entitled to an increase of pension upon remarriage, except upon the basis of a pamphlet received more than five years previously. I think it must be accepted that certain matters have escaped the claimant's memory: but the matter is not of great significance.

15. I agree with the local tribunal that good cause for the delay has not been proved. Accordingly, in terms of the regulations, the claimant is disqualified for receiving the increase of pension claimed, for any period more than three months before the date of claim.

16. The appeal of the claimant is not allowed.
