

SICKNESS BENEFIT

Late claim — claim passed through employer to DHSS

The claimant, a production worker, claimed sickness benefit for the period 5 1 78 to 7 1 78 on 6 3 78. The claim was received in the Department after the expiry of the time limit because it had first been sent to the claimant's employer.

Held that :-

1. The claimant was disqualified for receiving sickness benefit from 5 1 78 to 7 1 78 on the ground that he had failed, without good cause, to claim within the time prescribed by regulations (paragraph 1).
2. It is the responsibility of claimants to ensure that their claims get to the appropriate office of the Department of Health and Social Security, or are posted, in time (paragraph 4).

3. Notwithstanding the Department's acquiescence in the practice of medical certificates first being sent to employers to be noted, a claimant is not always in safety to assume that a claim given to an intermediary to pass on to the Department will be admitted. If a failure, or substantial delay, occurs in transmission, with the result that no payment or acknowledgement of the claim is received from the Department by the claimant, a time may arrive when the claimant may reasonably be expected to make an enquiry as to whether the claim was in fact received. From that moment failure by the claimant to take any action may fairly be attributed to him personally (paragraph 4).

1. My decision is that the claimant is disqualified for receiving sickness benefit from 5 January 1978 to 7 January 1978 (both dates included), on the ground that he failed, without good cause, to claim within the time prescribed by regulations.

2. The claimant, a production worker aged 22, appeals against the decision of the local tribunal dated 11 May 1978, confirming that of the local insurance officer imposing disqualification as above. He requested, and was granted, an oral hearing, at which he attended and explained his position.

3. Section 79 of the Social Security Act 1975 provides that "...it shall be a condition of a person's right to any benefit that he makes a claim for it in the prescribed manner and within the prescribed time". Section 82(1) of the Act authorises the making of regulations to provide for disqualifying a person for the receipt of any benefit if he fails to make his claim for it within the prescribed time. The Social Security (Claims and Payments) Regulations 1975 [S.I. 1975 No. 560] as from time to time amended specify the times prescribed for claiming the various benefits, and for disqualifying a claimant for receiving benefit not timeously claimed: subject to the proviso that disqualification may be avoided if good cause be proved for the delay in claiming (regulation 13). Regulation 4 provides that a claim is to be made to the Secretary of State (i.e. in practice to the local Health and Social Security office). Claims for sickness benefit (and most other benefits) may be made by post: and (provided they are correctly addressed) they are accepted as having been made on the day on which they are posted.

4. It is the responsibility of claimants to ensure that their claims get to the appropriate office of the Department of Health and Social Security, or are posted, in time. The form Med 3 on which claims for sickness benefit are commonly made is headed FOR SOCIAL SECURITY PURPOSES ONLY. Nevertheless a practice has grown up, and is acquiesced in (if not indeed encouraged) by the Department, whereby a claimant who requires to show his employer a medical certificate sends his form Med 3 (embodying his claim) directly to his employer, who notes it and passes it on to the Department. This practice has obvious advantages to all concerned. But it is not entirely free from risk. A claimant who entrusts his claim to an intermediary to post, or hand in, to the Department runs the risk that the intermediary may fail to do so, or to do so timeously. It is understood that where this procedure has been adopted, and there is some (not inordinate) delay on the part of the intermediary, the claim is accepted as timeous; or perhaps more properly that there has been good cause for the delay. No doubt this is within the

law, and reasonable. But a claimant is not always in safety to assume that a claim, given to an intermediary to pass on to the Department, will be admitted. If a failure, or substantial delay, occurs in transmission, with the result that no payment, or acknowledgment of the claim, is received from the Department by the claimant, a time may arrive when the claimant may reasonably be expected to make an inquiry as to whether his claim was in fact received. From that moment, failure by the claimant to take action may fairly be attributed to him personally: the law which requires "good cause" to be shown may be strictly applied: and the fact that the claimant merely followed the common procedure of sending his certificate to his employer for onward transmission may not — depending on the circumstances — be acceptable as "good cause".

5. In the present case the local tribunal considered that "the claimant should have made earlier enquiries regarding his claim to benefit, especially when he was involved in another claim to Sickness Benefit in February". At the oral hearing the claimant sought to explain that he had no occasion to make inquiry, but I am not satisfied that this was so. I confirm the decision of the local tribunal.

6. The appeal of the claimant is not allowed.

(Signed) H A Shewan
Commissioner
