

REA/SMA
DGR/SH/18

CLAIM - Leeds Council Fee not
CLAIMING BEFORE Dispute Assessment made

Commissioner's File: CI/4707/1995

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Kenneth Dickinson

Social Security Appeal Tribunal: Birkenhead

Case No: 6029408145

1. My decision is that the decision of the social security appeal tribunal given on 20 February 1995 is erroneous in point of law, and accordingly I set it aside. As it is convenient that I give the decision the tribunal should have given, I further decide that the claimant is not disentitled to reduced earnings/severe hardship allowance for the period from 1 August 1985 to 2 June 1992 by reason of the lateness of his claim. He has established continuous good cause for his delay.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the majority decision of the social security appeal tribunal of 20 February 1995.

3. On 21 March 1994 the adjudication officer decided that the claimant was not entitled to reduced earnings allowance for the period from 1 August 1985 to 2 June 1992, because his claim for that period, lodged on 3 September 1992, was not brought within the time limit set out in the regulations, and he had not proved that there was continuous good cause for his delay. In due course, the claimant appealed to the tribunal, who by a majority upheld the adjudication officer.

4. A claim for disablement benefit in respect of Prescribed Disease D4 (mucous membrane) was not received until 6 August 1992. In June 1993 the adjudicating medical authority assessed the disablement at 5% from 1 January 1960 for life. Because that assessment was less than 14% no disablement benefit was awarded, but as it was not less than 1% the claimant was not prevented from claiming reduced earnings allowance (which by established practice would include the earlier benefit severe

hardship allowance). He did not in fact make a claim for that allowance (which was from 1 August 1985) until 3 September 1992. This was out of time for any period prior to 3 June 1992, and neither the adjudication officer nor the tribunal were prepared to accept that he had good cause for his lateness. I consider that approach is wholly misconceived.

5. The claimant simply could not establish title to reduced earnings allowance until he had received an assessment for at least 1% in respect of disablement benefit. There was no practical advantage in making a claim until there had been an assessment. Without such an assessment, the claim was quite hopeless, and so of no practicable purpose whatsoever. In those circumstances, I consider it wholly unreasonable to have required the claimant to have lodged a claim for reduced earnings allowance at any time before he was in a position to establish title thereto. The earliest date when he knew that the necessary assessment had been made was June 1993, and by then he had made his claim for reduced earnings allowance. In those circumstances, I am satisfied that the claimant had good cause for his lateness, and consider it was unreasonable of the tribunal to have reached any other conclusion.

6. Accordingly, I set aside the tribunal's decision as being erroneous in point of law. However, it is unnecessary for me to remit the matter to a new tribunal for rehearing. I can conveniently substitute my own decision.

7. Accordingly, my decision is as set out in paragraph 1.

(Signed) D.G. Rice
Commissioner

(Date)

03 JUN 1996