

S 165A(3) (1) with late claims rule does not perpetuate discrimination & does not fall foul of directive.

RAS/6/LS

Commissioner's File: CP/05/1987

C A O File: AO 1048/P/86

Region: London South

SOCIAL SECURITY ACTS 1975 TO 1986  
CLAIM FOR RETIREMENT PENSION  
DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. My decision is that the claimant is not entitled to a Category A retirement pension before 25 January 1985.
2. On 25 January 1986 the claimant, who was 60 on 13 June 1975 and was therefore of pensionable age on that date, made a claim for a Category A retirement pension. Now as provided by regulation 14 of the Social Security (Claims and Payments) Regulations 1979 and Schedule 1 to those Regulations benefits including retirement pension have to be claimed within a prescribed time. But there is an amelioration provided by regulation 14(3) for those who are late with their claims. Subject to section 165A(3) of the Social Security Act 1975 claims can be backdated where the claimant throughout the period of the delay proves that there was good cause for that delay. In the present case it was accepted that in the circumstances the claimant had good cause and her pension was therefore backdated to 25 January 1985. It stopped there because of section 165A(3) of the 1975 Act which provides an absolute prohibition against backdating for more than 12 months before the date of the claim. It is that absolute prohibition which the claimant in this appeal seeks to overcome. She attended the oral hearing of her appeal where she was represented by her husband. The adjudication officer was represented by Mr N. J. Storey of the Solicitor's Office, Department of Health and Social Security.
3. The claimant is a victim of what was, before it was finally abolished, known as the married woman's half-test. That was the provision, widely regarded as iniquitous, in section 28(2) of the 1975 Act which had the effect that notwithstanding any contributions a married woman had made before she married she was not entitled to a Category A retirement pension unless she also satisfied the second contributions requirement i.e. at least half the number of tax years between the date of her marriage and the date of her attainment of pensionable age. This rule was abolished in stages, firstly in respect of women who reached pensionable age on or after 6 April 1979 and then, finally, by the Social Security Act 1985, the abolition being given retrospective effect to 22 December 1984. The retrospection to that date was due to the obligation to comply with EEC Directive 79/7 of December 1978 which had as its purpose the progressive implementation of the principle of equal treatment for men and women in matters of social security and which required member states to bring into force the laws necessary for compliance within 6 years of notification. The last day of the 6 years was 22 December 1984. As from that day the claimant was entitled to a Category A pension without the need to satisfy the half test but of course she was not in a position to make a claim until 23 July 1985 when the relevant provisions of the 1985 Act were commenced. Had she made her claim then her entitlement

could have been backdated to 22 December 1984. But, as I have said, she delayed to 25 January 1986 with the consequence that because of section 165A(3) of the 1975 Act she could not get her pension backdated for more than 12 months.

4. The claimant puts her case in this way. Discrimination against women in matters of social security was made unlawful by the Directive. The half test was an unlawful discrimination. The claimant suffered the discrimination since she attained pensionable age in 1975. It was not enough for the United Kingdom to abolish the half test retrospectively to the last day for compliance. They should have abolished it at least in relation to her as from the date when she turned 60 and certainly as from the date of the Directive. Furthermore, section 165A(3) which prevents backdating for more than 12 months was itself unlawful at least to the extent that its operation had the effect, as she said it did in her case, of perpetuating the unlawful discrimination. However, while I can accept the moral force of the claimant's contentions I am afraid they cannot succeed in law. It is plain beyond doubt that the Directive allowed member states 6 years to give effect to the principle of equal treatment and the United Kingdom complied with the Directive in respect of the married woman's half test by finally abolishing it as from the last day of the 6 years. And there is in my view no discrimination arising at least directly from the operation of section 165A of the 1975 Act. That is a provision dealing with the requirement to make a claim in the prescribed manner and time as a pre-condition of entitlement to benefit and allowing backdating in certain limited cases. It is not section 165A(3) which has perpetuated the discrimination in this case. In a sense it was the claimant herself because she delayed making her claim until 25 January 1986. I do not doubt and it has been accepted that the claimant had good cause for that delay. Had she known more about the matter she would have presumably claimed earlier and got the benefit of the abolition of the half test as from the earliest possible date.

5. Section 165A(1) of the 1975 Act provides in effect that a claim to benefit must be made before entitlement can arise. There are some exceptions to this which are provided by regulation 3 of the Claims and Payments Regulations and regulation 9 of those Regulations which as now amended allows in certain cases a claim to one benefit to be treated as a claim for another. The claimant's circumstances are not within the regulation 3 exceptions. And regulation 9 which in its amended form would have assisted as from 3 June 1985 (when the amendments commenced) in relation to claims made after that date cannot help because the claim which resulted in an award of a Category B pension was made in 1979, before the provision was amended. In any event the married woman's half test ruled out entitlement until 22 December 1984 so nothing can make a Category A pension payable to this claimant before that date. For that reason it does not help to consider whether the claim made in 1975 which resulted in an award of graduated retirement benefit was or might be treated as a claim for a retirement pension. Although I have not seen the actual claim I would not as at present advised take much persuading that it was or ought to be treated as a claim for retirement pension but, as I have said, that does not help. Furthermore it has at all times conceivably relevant to this case been the law that a claim for retirement pension may not be made more than 4 months before the date of entitlement - the present law is contained in paragraph 4(1) of Schedule 2 to the Claims and Payments Regulations. And that date in this case was, as I have said, 22 December 1984.

6. The adjudication officer now concerned with this case has commendably gone to much trouble to explore every possibility that the claimant might be entitled as from an earlier

date. There does not however seem to be a way out and I am afraid that, sympathetic as I am to the claimant's situation, her appeal must fail. My decision is as set out in paragraph 1.

(Signed) R A Sanders  
Commissioner

Date: 17 September 1987