

CP 19/1980

JNBP/EFM

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR RETIREMENT PENSION

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Arnold Tebbutt Hobbs

Local Tribunal: Exeter

Case No: 32/2

CP 19/1980

[ORAL HEARING]

1. My decision is that:-

- (a) increase of retirement pension for Mrs G M Hobbs is not payable from 24 July 1976 to 15 February 1978 (both dates included) because the claim was made on 16 February 1979 and the law prohibits the payment of such increase in respect of any period more than 12 months before the date on which the claim is made; and
- (b) the claimant is disqualified for receiving an increase of retirement pension for Mrs G M Hobbs from 16 July 1978 to 15 November 1978 because his claim for that period made on 16 February 1979 was not made within the time limit set out in regulations and he has not proved that there was continuous good cause for the delay in making the claim.

2. This is an appeal by the claimant from the decision of a local tribunal dated 19 June 1979 dismissing the claimant's appeal from the decision of the local insurance officer dated 21 February 1979. The effect of the local tribunal's decision was the same as that of my decision above.

3. I heard the appeal at an oral hearing at which the claimant was represented by Mr R Smith of the Citizens' Rights Office and the insurance officer was represented by Mr D Barlow of the Office of the Chief Insurance Officer. The claimant and his wife gave evidence.

4. I agree with the submission by the insurance officer now concerned with the case that the claimant's appeal to the local tribunal was late, that there appears to have been no formal extension of time by the chairman of the local tribunal but that in deciding to hear the case the chairman accepted that the time limit should be extended.

5. The claimant reached the age of 65 on 24 July 1976 and, having claimed retirement pension on 14 April 1976, was awarded it from 29 July 1976. He did not then claim an increase of pension in respect of his wife, then aged 56, but did so on 16 February 1979. That claim was allowed from and including 16 November 1978 but was disallowed for the period 24 July 1976 to 15 November 1978 (both dates included). It is accepted on behalf of the claimant that the increase cannot be paid for the period 24 July 1976 to 15 February 1978 (both dates included) because Section 82(2)(c) of the Social Security Act 1975 prohibits payment in respect of any period more than 12 months before the date on which the claim was made (i.e. 16 February 1979). It is also accepted that in so far as the claim related to the period 16 February 1978 to 15 November 1978 (both dates included) it was made outside the time limit prescribed by regulations and that the claimant must be disqualified for receiving the increase for that period unless he can show continuous good cause for his failure to claim before 16 February 1979. Accordingly, the only question in issue is whether good cause as aforesaid has been shown.

6. I am satisfied that until 16 February 1979 the claimant was unaware that he might be entitled to an increase of pension in respect of his wife while she was under 60 and earning and indeed that he positively but mistakenly believed that he was not so entitled. It is well established that ignorance of the right to a benefit does not of itself afford good cause for delay in claiming the benefit and it is conceded on behalf of the claimant that his mistaken belief cannot avail him unless it is shown that the belief was reasonably held. I have very considerable doubts whether the claimant had reasonable grounds for his belief before the time when he made his claim for pension on 14 April 1976. The belief was, it appears, mainly founded on what he had heard said by friends and acquaintances but it may have been contributed to by a misunderstanding of the significance of the effect of earnings on dependants' increases arising from earlier occasions when he claimed increase of sickness benefit in respect of his wife at times when she was not earning. However, it is unnecessary for me to decide whether the grounds for his mistaken belief were originally reasonable because, as will appear, I have reached the conclusion that they were no longer reasonable after he made his claim on 14 April 1976.

7. The claim form BR1 completed by the claimant is no longer in existence, having been destroyed after a certain period in accordance with routine procedure. However, it is clear from information on the form BR3A (Action Sheet - Retirement Pension) held by the Department of Health and Social Security, which must have been transferred from form BR1, that when the claimant completed form BR1 he must at least have indicated that he was married. What is not known is how he answered question no. 11 on the form, which as in use at the relevant date read as follows:-

"11. If you are a married man, do you wish to claim an increase in respect of your wife? - see the accompanying leaflet".

The claimant was unable to recall what answer he gave to question no. 11 or indeed whether he answered it at all but he did say that he could not think of any reason why he should have answered "No". It was argued on his behalf that if he either answered the question "Yes" or did not answer it at all it became reasonable for him to rely on the Department to sort out the question of his entitlement to increase and thus, presumably, to relieve himself of the burden of proving that he had good cause for doing nothing further. It was conceded, however, that if he were found to have answered "No" his claim would fail. It seems to me, however, that the crucial question is whether his mistaken belief, if reasonable before he answered question no. 11 continued to be reasonable thereafter or, if unreasonable before he answered question no. 11, became reasonable thereafter and I cannot see how that question can be answered by reference to the manner in which he answered question no. 11. Of course, if he had been in doubt about his entitlement, which I am satisfied that he was not, it is perhaps possible that his answer to question no. 11 might have revealed his doubts and indicated to the Department that he wanted further information. However, it seems to me that it cannot simultaneously be argued that he was convinced that he was not entitled to increase and that the Department became responsible for advising him on the basis that he had made it clear that he was in doubt. In any event, if he had been in doubt about the position and had so indicated it would have been unreasonable for him to make no enquiries when he found that he was not receiving anything in respect of his wife. For the foregoing reasons I do not consider that the claimant can be assisted by the argument that he may have either answered "Yes" to question no. 11 or not answered it at all and it is conceded on his behalf that he if answered "No" his claim must fail. In my judgment it is likely that he did answer "No". However, it appears to me that there are stronger grounds for concluding that as from the time when he completed form BR1 he had no reasonable grounds for his belief that he was not entitled to claim in respect of his wife.

8. The normal practice of the Department was that when form BR1 was sent to persons such as the claimant it was accompanied by a copy of leaflet NI15. In the present case there is no record of the leaflet having been sent and I therefore proceed on the assumption that the claimant may not have received it. However, the heading of form BR1, which was undoubtedly received by the claimant, included notes which the claimant was asked to read and the first note referred to an "accompanying leaflet". Further, the leaflet is again referred to in question no. 6 and in question no. 11 which is quoted in paragraph 7 above. The notes following question 6 begin with the word "IMPORTANT" in large print and ask for completion of Parts 2 and 3 of the form if the claimant has answered "Yes" to any part of question no. 6. The present claimant must have answered "Yes" to the first part of question no. 6 and therefore should have seen the further reference to the leaflet when he came to question no. 11 in Part 2 of the form. In my view, if the claimant did not receive leaflet NI15 he cannot be said to have acted reasonably in failing to ask to see the leaflet which would have explained the position about his wife to him or, if he could not understand what it said, would have made it unreasonable for him not to make further

enquiries. If he did receive the leaflet his position is no better. My conclusion is, therefore, that the claimant's belief that he could not claim in respect of his wife was no longer reasonable after he completed form BR1 because by that time his attention had been drawn to a source of information (if he received leaflet NI15) or to the existence of a source of information (if he did not receive the leaflet) which it was unreasonable of him not to consult.

9. I have taken note of the claimant's state of health at the relevant time but in my judgment the evidence does not justify the conclusion that it afforded good cause for his failure to claim sooner.

10. Having considered all the circumstances of the case and the documents and evidence I regret that I must reach the conclusion that the claimant has failed to prove that he had good cause for his failing to claim increase for his wife before 16 February 1979. I must therefore dismiss the appeal and give the decision set forth in paragraph 1 above.

(Signed) J N B Penny
Commissioner

Date: 10 February 1982

Commissioner's File: C.P. 19/1980
C I O File: I.O. 2132/P/79
Region: South Western