

Retirement Pension - 1st. PAY DATE. 0795

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Commissioner's File: CP/059/93

SOCIAL SECURITY ACTS 1975 TO 1990
SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR RETIREMENT PENSION

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's appeal, brought by leave of the Chief Commissioner, against a decision of the social security appeal tribunal dated 6 January 1993 which confirmed a decision issued by the adjudication officer in 1992. (The exact date upon which that latter decision was issued does not appear from the papers; but it must have been before 8 June 1992, which was the date upon which the claimant appealed against it.) We are, accordingly, in the field of the old legislation - as opposed to the consolidating legislation which came into effect on 1 July 1992. My own decision is that the aforesaid decision of the appeal tribunal is not erroneous in point of law.

2. The claimant's complaint is - so far as the adjudicating authorities are concerned - something of a hardy annual. I have myself given previous decisions upon the point. As appears below, the point came before a Commissioner in 1973. In none of those cases was there at stake more than six days of retirement pension. But, of course, six days of pension are six days of pension; and I have certainly seen claimants pursuing to Commissioner level cases (involving benefits other than retirement pension) in which even smaller sums of money were in issue. It is possible that this particular claimant considers a point of principle to be at stake. On form OSSC 3, signed on 31 January 1994, he wrote:

"I can only reiterate that state retirement pension is payable from and including the day of the 65th birthday. This entitlement is not nullified because the D.S.S. chose to adopt alternative pay days for the sake of administrative convenience."

But the legislative background makes it clear that the officers of the Department were merely complying with the legislation which Parliament enacted.

3. The claimant was born on 7 November 1926. Accordingly,

his 65th birthday fell on 7 November 1991 - which happened to be a Thursday. He had signed his claim for retirement pension on 22 July 1991. The claim form contained the following question:

"Do you have a spouse who is getting their Retirement Pension paid on a Thursday?"

To that, the claimant ticked the "Yes" box. The next question read:

"Do you want your Retirement Pension paid on a Thursday as well?"

Again, the claimant ticked the "Yes" box. It transpired that the first of those answers was factually wrong. The retirement pension of the claimant's wife was - and always had been - paid on a Monday.

4. The claimant's retirement pension worked out at £58.80 a week. The pension was paid to him at four week intervals, each such payment amounting to £235.20. None of that is the subject of dispute. What is in dispute is that when the claimant was credited with the first payment of £235.20 he noted that that payment was in respect of the period from Monday, 11 November to Sunday, 8 December 1991. He had attained the age of 65 on Thursday, 7 November 1991. What about his pension in respect of the four days prior to Monday, 11 November? I can tell him.

5. At the relevant time, section 28 of the Social Security Act 1975 opened thus:

"28(1) A person shall be entitled to a Category A retirement pension at the rate specified in section 6 of the Pensions Act, if -

(a) he is over pensionable age, and

(b) he satisfies the contribution conditions for a Category A retirement pension specified in Schedule 3, Part I, paragraph 5;

and, subject to the provisions of this Act, he shall become so entitled on the day on which he attains pensionable age and his entitlement shall continue throughout his life. [My underlining]

(1A) A Category A retirement pension shall not be payable in respect of any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of section 51(1)(m) of the Social Security Act 1986."

Section 51(1)(m) of the 1986 Act provided as follows:

"51(1) Regulations may provide -

....

(m) for the day on which entitlement to such a benefit is to begin or end;

...."

Sub-section (2) of section 51 opened thus:

"(2) This section applies to the following benefits -

(a) benefits under the Social Security Act 1975;

...."

(Section 28 of the 1975 Act now features as section 44 of the Social Security Contributions and Benefits Act 1992; and section 51(1) and (2) of the 1986 Act is reflected in section 5(1) and (2) of the Social Security Administration Act 1992.)

6. Section 51(1)(a) to (s) of the Social Security Act 1986 is specifically mentioned amongst the powers pursuant to which were made the Social Security (Claims and Payments) Regulations 1987. Regulation 16(1) provides thus:

"16(1) For the purpose only of determining the day from which benefit is to become payable, where a benefit other than one of those specified in paragraph (4) is awarded for a period of a week, or weeks, and the earliest date on which entitlement would otherwise commence is not the first day of a benefit week, entitlement shall begin on the first day of the benefit week next following." (My underlining)

And paragraph (4) of regulation 16 provides thus:

"(4) The benefits specified for exclusion from the scope of paragraph (1) are unemployment benefit, sickness benefit, invalidity benefit, maternity allowance, severe disablement allowance, income support and any increase of those benefits."

7. Retirement pension is, of course, a "long-term benefit" (regulation 2(1) of the Claims and Payments Regulations). Paragraph (3) of regulation 22 of those Regulations provides thus:

"(3) Schedule 6 specifies the days of the week on which the various long term benefits are payable."

Paragraph 5 of Schedule 6 is headed "Retirement Pension". I set out so much of that paragraph as is presently in point:

"5 Retirement pension shall be payable on Mondays, except that -

- (a) where a person became entitled to a retirement pension before 28th September 1984, that pension shall be payable on Thursdays;

[sub-paragraphs (b) and (c) concern women only]

- (d) the Secretary of State may, notwithstanding anything contained in the foregoing provisions of this paragraph, arrange for retirement pension to be payable on such other day of the week as he may in any particular case determine;

- (e) where, in relation to any person, any particular day of the week has become the appropriate day of the week for the payment of retirement pension, that day shall thereafter remain the appropriate day in his case for such payment."

(It is common ground that in the case now before me the Secretary of State has made no such arrangement as is contemplated by sub-paragraph (d).)

8. So that is it. If the claimant has a complaint, it must be directed against the legislature and not against the adjudicating authorities. There is, in fact, a "swings-and-roundabouts" element. This claimant elected to be paid in arrears by direct credit transfer (cf regulation 21 of the Claims and Payments Regulations). But where there is no such election, retirement pension is paid "weekly in advance, by means of benefit orders payable in each case to the beneficiary at such place as the Secretary of State, after enquiry of the beneficiary, may from time to time specify". So a pensioner who dies on the day after he has cashed an order will have received pension in respect of five days upon which he was not, in fact, alive. Such overpayment is not recoverable from his estate.

9. Legislative provisions similar to those which I have set out above have been in force for a very long time. Such provisions appear to have been before the Commissioner who decided R(P) 16/52. They were certainly before the Commissioner who decided R(P) 2/73. I can only echo paragraph 8 of his decision:

"8. The claimant's main criticism appears to be that the effect of the statutory provisions as applied by the insurance officer and by the local tribunal is to 'discriminate against those claimants whose anniversary date unfortunately falls on a day of the week other than [the relevant pay day]'. No doubt the effect of making a benefit to run from week to week rather than from day to day is that a few days' benefit may be lost in certain cases. But to describe this as discrimination against claimants, in respect of the date of the anniversary of birth is, with respect, far-fetched. In any event, if this were a substantial complaint, it would be for the legislature to remedy it, and not for the statutory

authorities, who must apply the law as it stands."

10. The claimant's appeal is disallowed.

(Signed) J Mitchell
Commissioner

Date: 5 October 1994