

IEJ/BDS

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR SICKNESS BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

CS 168/1982

1. This appeal does not succeed. My decision is that the claimant's right to payment of the sums of £38.15 and £25.43 by way of sickness benefit, which is to be treated as having arisen on 23 March 1979 and 29 March 1979, has become extinguished: first because payment was not obtained within the period of 12 months from those dates prescribed by the regulation below mentioned; and secondly because I am not satisfied that during the period also so prescribed over which in the event last mentioned the claimant must in order to sustain her right to their payment establish "continuous good cause" for not giving written notice requesting their payment she has so established: Social Security (Claims and Payments) Regulations 1979, regulation 22 ("Reg 22").

2. (1) The claimant made successful claims for sickness benefit for the period 12 March 1979 to 28 March 1979 by claiming timeously in reliance upon medical certificates issued in that behalf. Two girocheques were issued in respect of these claims, the first on 23 March 1979 in the sum of £38.15 (representing payment from 12 March 1979 to 21 March 1979) and the second on 29 March 1979 in the sum of £25.43 (representing payment from 22 March 1979 to 28 March 1979). Neither was ever encashed.
- (2) The claimant, who has at all material times been in whole-time employment (save for the period of incapacity for work comprised by the claims above-mentioned and a subsequent period embracing 5 May 1981 to 20 May 1981) was living at all material times in circumstances of some stress.
- (3) She was assisted in remembering to claim sickness benefit timeously for the period 12 March 1979 to 28 March 1979 because she had to obtain and furnish a medical certificate to her employer in respect of upwards of three days' consecutive absence.

- (4) It is not in dispute that the two girocheques above-mentioned were sent to and arrived at the claimant's home address in a normal course following their despatch. Shortly put, the reason why the girocheques were not encashed during their period of currency after receipt, as also the reason why the claimant did not give written notice to the Secretary of State requesting payment of the sums in which they were drawn before in fact she did on 7 September 1981, was that their existence uncashed, and the undrawn entitlement which they represented, "slipped her mind".
- (5) In a letter to the Department of Health and Social Security received on 7 September 1981 the claimant indicated how she had found the two girocheques, stating (emphasis here supplied by me):-

"These were not cashed at the time due" [to] "myself and my mother both being ill and we had a helper in to help us around the house. This helper must have scooped these giros with other papers and put them tidily in a place we did not" [k] "now. She did not tell us that they had come or where she had put them. My mother died 30.4.81 and I have just got around to look through all papers and have found these giros".

This letter was accepted on behalf of the Secretary of State as constituting for the purposes of regulation 22 a sufficient notice requiring repayment.

3. The substantial issue on the present appeal is whether in the circumstances in which that occurred and subsisted she can satisfy the stipulated requirements under Reg 22 which alone would enable her now to obtain payment of the benefit they represent and which (as she quite correctly and properly observes) represent a benefit her entitlement to which had been secured by contributions to the National Insurance Fund by and in respect of her. It is, however, necessary to comply with all relevant requirements of the social security scheme in order to obtain payment of benefits thereunder. And whilst, at large, that scheme might have imposed no time limits or conditions as to when benefit must be drawn, or have imposed some more liberal provisions than in fact it does impose, the difficulty which confronts the claimant is that Parliament has by Reg 22 expressly stipulated a basic time limit of 12 months from date of issue within which payment of sickness benefit must be encashed, and then provided for extension without express limitation in point of time, but only under conditions of considerable stringency. The substantive issue upon this appeal is whether or not the claimant can satisfy these conditions.

4. In the circumstances I have indicated as to the sending of the girocheques, Reg 22(1) provides for extinguishment of the right to payment of the sums in which they were drawn "where payment thereof is not obtained within the period of 12 months from the date on which the right is to be treated as having arisen" and that right is in the circumstances of the case to be treated as having arisen in each case

on the date at which the instrument of payment - the girocheque - was drawn. But that effect is modified by the provisions of, materially, paragraph (2) of Reg 22.

5. Reg 22(2) provides as follows:-

"Where a question arises whether the right to payment of any sum by way of benefit has been extinguished by the operation of this regulation and the determining authority is satisfied that -

(a) after the expiration of the said period of 12 months the Secretary of State has received written notice requesting payment of that sum; and

(b) throughout the period commencing within the said period of 12 months and continuing up to the day on which the said notice was given there was good cause for not giving that notice;

the said period of 12 months shall be extended to the date on which the determining authority decides that question, and for the purposes of the operation of this regulation thereafter the right to payment of that sum shall, notwithstanding the provisions of paragraph (1), be treated as having arisen on that date."

6. It is beyond dispute that:

(i) unless saved by paragraph (2) of Reg 22 the claimant's right to payment of the two sums in issue has been extinguished under paragraph (1) of Reg 22; and

(ii) the "period of 12 months" which is termed "the said period of 12 months" expired in the case of the first girocheque on 22 March 1980 and as regards the second on 28 March 1980.

7. It is common ground that the Secretary of State did in terms of Reg 22(2)(a) receive written notice requesting payment of both the sums presently in issue and that, if the claimant can satisfy the requirements of (b) above, the effect of the concluding provisions of Reg 22(2) will be that the right to payment of those sums will not have become extinguished - and will indeed continue to subsist for a further period following my decision on this appeal. Thus the issue can be further narrowed to whether or not the claimant can satisfy the requirement of Reg 22(2)(b) that:-

"throughout the period commencing within the said period of 12 months and continuing up to the day on which the said notice was given there was good cause for not giving that notice".

8. In order to decide that question it is material in the first instance to arrive at the proper construction of the provision last above cited. And whilst it is not difficult to draw from that wording the imposition of a requirement that the claimant shall

establish good cause for delay in giving written notice to the Secretary of State for a continuous period which ends when in fact such notice is given, I have not found it altogether simple to elucidate when it is stipulated such period shall begin.

9. As a first step along that road, study of the regulation as a whole indicates that "the said period of 12 months" is a reference to the text of Reg 22(1), importing the "period of 12 months from the date on which the right is to be treated as having arisen" there referred to. But what is meant by "the period commencing within" that period?

10. The key to answering that is in my judgment to be found from the circumstance that under the primary operation of Reg 22(1) there is a period of 12 months from the date on which the right to payment is to be treated as having arisen during which such right does not become extinguished, and a claimant is in no way penalised for failure to encash the girocheque which she has received. It follows, therefore, that it might well be thought unfair if a claimant who had failed to claim within the 12 months period was required (as a condition of avoiding extinguishment of the right to payment) to show good cause right back to the date on which the right to payment fell to be treated as having arisen, in view of the absence of penalty for delay within the 12 months. Taking that into account, it appears to me clear that the period for which good cause must be shown must start with some date (any date - it matters not which) within the stipulated 12 month period as from which, and thenceforward (and past the conclusion of the 12 month period) the particular claimant is able to establish good cause.

11. (1) It follows from that construction that Reg 22(2) cannot assist a late claimant who cannot show good cause for delay for a period which has a starting date within the initial 12 months period, but can prospectively assist a late claimant who can show a period of good cause to have commenced even one day before the expiration of the 12 month period, and continued down to the giving of appropriate notice.

(2) This may still leave some element of inequity as between a claimant who "wakes up" and acts by giving notice on the last day of the 12 months and another claimant who "wakes up" and acts only on the first day following the expiration of the 12 months. But that does not in my view invalidate the construction I have indicated.

12. (1) An appeal in this branch of the jurisdiction of the statutory authorities (of which the Commissioner is one) is "by way of re-hearing", in that it is now for me to decide whether or not the claimant satisfies the requirements of Reg 22(2) independently of the conclusion reached by the local tribunal from whose decision the claimant is appealing, and the expressed reason upon which they founded their decision. But,

understandably, the claimant has in her grounds of appeal addressed herself to the reason given by the local tribunal for rejecting her appeal and has indicated (as is so) that this was that "good cause" was not continuous over the period concerned.

- (2) As to that she has now submitted that the same conditions applied from the first day of receipt of the first girocheque until (following the death of her mother in April 1981) she found it amongst her mother's papers at the beginning of September 1981; and continues "there was no way the cheques would have come to light during the specific period, for until my mother's death I had no need or necessity to look through her correspondence and papers; being totally unaware the cheques were there". I accept that there is some force in this contention, for it frequently happens that if a person once forgets about a particular matter it requires some extrinsic occurrence to "jog the memory" and reactivate awareness of it. But it is well-established in this jurisdiction that "good cause" means more than "a good excuse". As it was put in Decision R(S) 2/63, approving an earlier formulation in the same terms, "'good cause' means some fact" (or, I would myself add, factor) "which having regard to all the circumstances (including the claimant's state of health and the information which he had received and that which he might have obtained) would probably have caused a reasonable person of his age and experience to act (or fail to act) as the claimant did."

13. I should here interpose, since the claimant has complained of there being references to "he" instead of "she" in the written submissions on the case file by the insurance officer now concerned, that when citing from another decision - as the insurance officer was in his submissions and I am above - it is the sex of the claimant to whose case that decision related which determines the selection of "he" or "she" as appropriate.

14. (1) With one exception with which I will now deal, the circumstances in which this claimant was placed at all material times are not in significant dispute.
- (2) However, the insurance officer's submissions on this appeal include (by way of purported recapitulation of the material facts) "a helper who was present in the house at the time had tidied up and put the giros in a safe place. The helper did not inform them that the giros had arrived or where she had put them (page 4)". The claimant takes issue upon that passage - she says in her

further comments on her appeal "I have never suggested I was unaware of the arrival of the cheques. These were put on the sideboard to be dealt with when possible. It was at this stage that the home-help, in the process of tidying up must have placed the envelope amongst my mother's papers".

- (3) Now, it is literally true that the claimant has never "suggested I was unaware of the arrival of the cheques" in terms. However, as will be seen from the passage from her letter I have underlined in paragraph 2(5) above the claimant by the words "She did not tell us that they had come or where she had put them" promotes - by accident or on purpose - the inference which the insurance officer has drawn and expressed as to the claimant being unaware of the arrival of the girocheques.

However, I am prepared to accept the claimant's more recent comment as corrective of that inference - though I do not think that the corrected version materially assists the claimant.

15. (1) Many of us from time to time, and particularly in times of stress, overlook something which needs to be done. Often we recollect it in time to retrieve the situation, sometimes we do not.
- (2) The omission to encash these girocheques initially arose within the relevant 12 month period and in the sort of circumstances which not infrequently happen - as do also those in which, over two years later, the claimant became re-alerted. But that is not enough to establish "good cause", for it happens no less frequently that people suffer loss in consequence of their own carelessness or lack of foresight.
- (3) Giving all the weight I deem proper to the circumstance that once the girocheques had been put out of sight as a reminder they could not serve to prompt the claimant's recollection of their existence and the need to encash them, and accepting - as did the local tribunal - all that the claimant has indicated as to her and her mother's health and as to her circumstances of life over the time from receipt of the girocheques until her service of written notice upon the Secretary of State, I am not satisfied (as they were not) that the claimant establishes good cause over the requisite period.

16. (1) For to my mind, even after taking all the circumstances into account, I must conclude that a reasonable person of the claimant's age and experience would not have failed to act as the claimant failed to act. Within the relevant 12 months period such reasonable person would, in my judgment, although unprompted by sight of the girocheques have become alerted to the fact that although she had made the claims for benefit she had not obtained the money, and would have then taken steps to obtain it.
- (2) It is unnecessary to postulate exactly when it is to be predicated a reasonable person would have done that; but I think it should have occurred within a few weeks at most after the claimant's return to work after the end of the period of incapacity for work to which the claims related.

17. (1) Since the likelihood of memory of something forgotten may be said to diminish with the passage of time, in the absence of something occurring to prompt recollection, it might at first sight appear that at some date late in the initial 12 months period the claimant commenced to have "good cause" even though she had not earlier - and, following from that, that the period for which good cause is shown was then continued down to the date upon which in fact the claimant gave her written notice.
- (2) But this line of reasoning is to my mind fallacious. True it is that under Reg 22 no need to establish "good cause" at all arises as regards the initial 12 months period; and true it is also that (as I have held as a matter of construction) where it is sought to invoke Reg 22(2) good cause commenced within the 12 months period (and sufficiently continued) suffices even if the date of commencement was late in that 12 months period.
- (3) But good cause cannot in my judgment found, as it were, from the compounding of an error by the passage of time.

The true cause of the claimant failing, as in fact she failed, to act during the later stages of the 12 month period itself (as also during the further interval after that had run and prior to her eventual action in the matter) was in correct analysis the unretrieved original oversight. The fact that by the time the 12 months were coming to an end the likelihood of any unprompted recollection of the need to obtain payment had become remote is irrelevant.

And that course of events is to my mind fatal to the claimant's success on the present appeal.

- (4) In close analysis the "flexibility" of commencement of the date provided for in Reg 22(2)(b) serves only, to my mind, to admit commencement upon the foundation of some meritorious (or at least "not unmeritorious" when judged by the material standard of conduct) intervening circumstance which converts reliance upon the indulgence afforded by Reg 22(1) over the initial 12 months into a thereafter continuing period of "good" cause - and there is no intervening circumstance of that quality to be found in the circumstances of the present case.

18. Whilst I have not referred individually above to all the points put forward by the claimant in her form LT62 dated 28 April 1982 above the claimant may be assured that I have taken each of them fully into account in arriving at my decision as above expressed. My decision is as indicated in paragraph 1 above.

(Signed) I Edwards-Jones
Commissioner

Date: 29 June 1982

Commissioner's File: C.S. 168/1982
C I O File: I.O. 8042/S/82
Region: West Midlands

NOTE

This decision is starred because:

- (1) paragraphs 5-11 and 17 deal with questions of construction and application of regulation 22(2) of the Social Security (Claims and Payments) Regulations 1979 which do not appear to be the subject of previous decision;
- (2) if the conclusions I have reached command general approval the anomaly referred to in paragraph 11(2) may be thought to merit reconsideration of the present wording of the regulation - whilst if they do not, there would appear to be need for corrective decision or for legislative amendment directed to greater clarity.

I Edwards-Jones