

increase of 1/15 for wife

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SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal given on 5 October 1989 is erroneous in point of law and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 5 October 1990. In view of the complexity of the case an oral hearing was directed. At that hearing the claimant, who was present, was represented by Mr D Elliott of the Welfare Rights team of the Colchester Borough Council, whilst the adjudication officer appeared by Mr L Varley of the Solicitor's Office of the Department of Social Security.

3. The question for determination by the tribunal was the extent to which the claimant was entitled to an increase of invalidity benefit in respect of his wife. This in turn depended upon the degree to which such increase had to be adjusted to take account of the wife's retirement pension. The latter, on attaining the age of 60 on 27 February 1986, had claimed retirement pension, and this was payable from 3 March 1986. That pension included three elements, the basic pension, the additional pension and the graduated retirement benefit, and for the period from 3 March 1986 to 27 July 1986 amounted to £22.89, per week, for the period from 28 July 1986 to 5 April 1987 to £23.22 per week, and thereafter to £23.87 per week and upwards.

4. The adjudication officer deducted the retirement pension in full from the increase of invalidity benefit otherwise payable, and decided that the increase actually payable was £0.11 per week from 3 March 1986 to 30 July 1986, £0.03 per week from 31 July 1986 to 8 April 1987, and thereafter ceased to be payable at all. In due course, the claimant appealed to the tribunal, who in the event upheld the adjudication officer.

5. The crucial regulation is regulation 10 of the Social Security (Overlapping Benefits) Regulations 1979 [S.I.1979 No.597]. That provides as follows:-

" 10. - (1) Subject to the following provisions of this regulation, where a dependency benefit under the Act is payable for the same period as one or more of the following personal benefits is, or but for the provisions of these regulations would be, payable to the dependant -

(a) a personal benefit under Chapter I or II of Part II of the Act

the dependency benefit shall be adjusted in accordance with paragraph (2).

(2) Where the weekly rate of the personal benefit (or, if more than one, the aggregate weekly rate payable after any adjustment made by virtue of regulations 4(1) or 6(1) -

(a) is equal to or exceeds the weekly rate of the dependency benefit, the dependency benefit shall not be paid;

(b) in any other case, the weekly rate of the dependency benefit payable shall be adjusted, if necessary, so that it does not exceed the difference between the weekly rate of the personal benefit and that of the unadjusted dependency benefit.

(3)

(4)"

6. The increase of invalidity benefit was clearly a dependency benefit, and the payment to the claimant's wife of retirement pension was clearly a personal benefit. Accordingly, the increase in invalidity benefit had to be adjusted, pursuant to regulation 10, to allow for payment of the personal benefit in the form of the wife's retirement pension. The claimant's case was that, although he accepted that his wife's basic pension had

to be deducted from his increase in invalidity benefit, this was not the case with her additional pension or her graduated retirement benefit. The tribunal rejected this contention, and deducted all three components.

7. Mr Varley, in performance of his duty to put forward any point that might be made on behalf of the claimant, accepted that the tribunal had erred in point of law in one respect. He conceded that, pursuant to the decision of the Court of Appeal in Pearse v. The Chief Adjudication Officer and the Secretary of State for Social Security, the graduated retirement benefit should not have been included as part of the claimant's retirement pension, and as a result should not have been deducted from the increase in invalidity benefit. To that extent the tribunal erred in point of law, and he conceded that I must necessarily set aside their decision on that ground. There would clearly have to be a recalculation of the claimant's entitlement. I accept that submission.

8. However, the more important matter was whether or not the additional pension was to be included with the basic pension, and deducted from the increase of invalidity benefit. Mr Varley contended that this was the case pursuant to regulation 10(2). He accepted that the weekly rate of the personal benefit was subject to any adjustment by virtue of regulation 4(1), but contended that in the circumstances of this case no such adjustment was called for. Regulation 10(2) therefore operated without restriction, and the increase of benefit had to be reduced to allow for the combined total of the basic pension and additional pension of the claimant's wife.

9. In this connection, Mr Varley had, prior to the hearing, made a written submission dealing with regulation 4 (set out, so far as is relevant, in the schedule hereto) which he adopted in his address to me. This submission reads as follows:-

".... when regulation 10 of the Social Security (Overlapping Benefits) Regulations is applied, regulation 10(1) is satisfied in this case and so regulation 10(2) is applicable. This provision refers specifically to the case where more than one personal benefit is payable and refers back to regulations 4(1) and 6(1). Regulation 4(1) is prima facie applicable since two personal benefits are payable under Chapter I of Part II of the Social Security Act 1975 to the claimant's wife in this case (i.e. basic pension and additional pension). However, regulation 4(2)(f) has the effect that adjustment of benefit is not to be made in respect of additional pension except as provided in regulation 4(4). Regulation 4(4) only applies where two or more personal benefits are in payment as well as additional pension or graduated retirement benefit. This point was accepted in the submission on behalf of the claimant of 5 March 1990 (page 70, final paragraph). As this is not the case here, as only retirement pension is payable to the claimant's wife, regulation 4 has no application.

5. No adjustment is therefore required to be made to personal benefits paid to the claimant's wife under regulation 4. The application of regulation 10(2) means that the basic pension and additional pension are aggregated for the purpose of the calculation in that regulation. Additional pension will therefore be offset against the amount of dependency benefit which is payable in this case ..."

10. I accept Mr Varley's submission. Accordingly, the tribunal did not err in so far as they deducted from the increase in invalidity benefit otherwise payable the additional pension as well as the basic pension.

11. However, as explained above, I have in any event to set aside the tribunal's decision because they incorrectly deducted also the graduated retirement benefit. Accordingly, I direct that the appeal be reheard by a differently constituted tribunal who will make a new calculation, deducting the basic and additional pensions, but not the graduated retirement benefit.

12. I allow this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 8 July 1993

Schedule

Social Security (Overlapping Benefits) Regulations 1979

Regulation 4. - (1) Subject to paragraphs (2), (3) and (4) and regulation 12, where two or more personal benefits (whether of the same or a different description) are, or but for this regulation would be, payable under Chapters I and II of Part II of the Act (which relate to benefits other than industrial injury benefits) for any period, an adjustment shall be made in accordance with paragraph (5).

(2) Paragraph (1) shall not require the adjustment of, or by reference to -

....

(f) additional component or graduated retirement benefit (except as provided by paragraph (4)).

(3)

(4) Where there are payable two or more personal benefits to which this regulation applies with which additional component or graduated retirement benefit is payable as part of the rate of benefit or as an increase of benefit, or then the following provisions shall apply -

....