

Penny's copy, Good cause for delay in applying for review of AA claim

RAS/1/LM

Commissioner's File: CA/364/90

SOCIAL SECURITY ACTS 1975 TO 1990

CLAIM FOR ATTENDANCE ALLOWANCE

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Sibell Kathleen Watson (Mrs) on behalf of
Sybil Woodhead (Mrs) (deceased)

Appeal Tribunal: Truro

Case No: 333:02294

1. My decision is that the majority decision of the social security appeal tribunal dated 28 June 1988 is erroneous in law and I set it aside. As it is expedient for me to do so, I find facts as indicated below and on those facts decide that throughout the period from 1 May 1986 to 28 April 1987 the late Mrs S. Woodhead had good cause for delay in making her application for review of her award of attendance allowance.

2. Mrs S. Woodhead, who died on 29 August 1987, was awarded an attendance allowance, at the lower rate, from 4 June 1984. She was then nearly 90 and living with and being looked after by her niece Mrs S. Watson and her niece's husband. On 28 April 1987 Mrs Woodhead made a further claim for an attendance allowance which was treated as an application for review and eventually a certificate was issued to the effect that she had satisfied the medical conditions for the higher rate of attendance allowance from 1 May 1986. Thereupon an adjudication officer, on 15 February 1988, decided that the higher rate could not be paid more than 3 months before the date of the request for the review because "The claimant and Mrs S. Watson have not proved that there was good cause for delay in making the application for review". That, I should say, was something of a muddle because the issue was whether Mrs Woodhead not Mrs Watson had good cause for delay. By the time the adjudication officer had given his decision Mrs Woodhead had died so the appeal to the tribunal was in effect on behalf of her estate. Mrs Watson put before the tribunal this graphic account of her aunt -

"A proud, intelligent woman of determined character and keen faculties, she resisted transfer from hospital until reluctantly brought in January 1984, courtesy of St John's Ambulance, into the care of my husband and self, whom she scarcely knew.

From the start dozing by day and unfit for sedation, she frequently called for attention by night, which, in common with many carers and all parents of young children, I took in my stride. She was not then ill, but frail, arthritic

and unsafe without supervision. My aunt resented her infirmity and strove to maintain independence. Complete and private control of her affairs was essential to her vitality of mind.

Comfortably seated when interviewed, she projected her considerable charm upon the DHSS visiting doctor. Her perception of the extent of her need was clearly different from my experience of it. She was satisfied and pleased with her pension and allowances, and had little appreciation of changed values and rising costs. This illustrates the crux of a flaw in the system. First. Claim for attendance allowance is not the prerogative of the carer. Second. Nor is distribution of the invalid's income. To establish the former does not guaranty advantage from the latter. Mrs Woodhead was a nonagenarian of stern Victorian principle. Money was a difficult topic and unworthy of disruption to a happy, working relationship."

The reasons the tribunal majority gave for disallowing the appeal were recorded as follows -

"The majority of the Tribunal were of the opinion that continuous good cause for the delay in making the application for review had not been shown. They were particularly influenced by the statements that the Claimant objected to being on benefit and had to be persuaded to apply and were mindful of the Commissioner's Decision that a conscious decision not to claim benefit cannot be regarded as continuous good cause for a delay in making a claim."

Mrs Watson, on behalf of the estate, now appeals to the Commissioner.

3. The one issue in this case is whether in the circumstances the late Mrs Woodhead had good cause throughout the period from 1 May 1986 (when she satisfied the higher rate conditions) to 28 April 1987 (when the application for review was made) for delay in making her application: see regulation 65(2) of the Social Security (Adjudication) Regulations 1986. In my view, as appears from the passage from their reasons quoted above, the tribunal majority placed too much emphasis on the fact that, as they put it, Mrs Woodhead had made the conscious decision not to make her application sooner than she did and they lost sight of the overall picture of Mrs Woodhead as provided to them by Mrs Watson. That is a picture of a very elderly, frail lady who, to some extent because of her independent spirit, was really incapable of acknowledging the extent of her needs. In my view the decision of the tribunal majority is erroneous in law because they failed to take account or at least sufficient account of all the evidence before them. I find as facts the factual matters

referred to in the passage quoted above from Mrs Watson's statement and on those facts give the decision set out in

paragraph 1.

(Signed) R A Sanders
Commissioner

Date: 10 June 1992