

CG 67/1978

IOG/GJH

SOCIAL SECURITY ACTS 1975 TO 1979

CLAIM FOR MATERNITY BENEFIT

DECISION OF THE NATIONAL INSURANCE COMMISSIONER

Name: Lucy Caroline Sharp (Mrs)

Local Tribunal: Crewe

Case No: 14/1

1. This is a claimant's appeal from the decision of a local tribunal dated 30 March 1978 confirming the decision of the insurance officer dated 14 February 1978. My decision is that the claimant is not disqualified for receiving maternity allowance for the inclusive period 21 November 1977 to 21 January 1978 although her claim for that period accepted as being made on 24 January 1978 was not made within the time limit prescribed by regulations because the claimant has proved that there was continuous good cause for the delay in making the claim: Social Security Act 1975 section 82(1) and the Social Security (Claims and Payments) Regulations 1975 regulation 13 and Schedule 1.

2. On 24 January 1978 the claimant claimed maternity benefit in respect of a confinement expected during the week beginning 5 February 1978. She completed page 2 of BM4 relating to maternity grant only. When details of her national insurance contribution record were obtained it was discovered that she had title to maternity allowance. A claim for maternity allowance was therefore invited. The claim for maternity allowance was accepted by the insurance officer as made on 24 January 1978 that is to say the same day upon which she made claim for maternity grant.

3. The effect of Social Security Act 1975 section 82(1) and the Social Security (Claims and Payments) Regulations 1975 regulation 13 and Schedule 1 is that a claim for maternity allowance made in expectation of confinement must be made during the period of 3 weeks beginning with the 14th week before the week in which it is expected that the claimant will be confined. The date of confinement in this case was 6 February 1978. It follows that the claim for maternity allowance ought to have been made between 31 October 1977 and 19 November 1977. It follows therefore that the claim for maternity allowance was not made within the time prescribed by regulations. Where such a claim is not made within the prescribed time limit the claimant is disqualified for receiving maternity allowance in respect of any period before the beginning of the week in which the claim is made unless she shows good cause for the delay throughout the period immediately preceding the date of claim. In this context

good cause means some fact which having regard to all circumstances (including the claimant's state of health and the information which she had received and which she might have obtained) would probably have caused a reasonable person of the claimant's age and experience to act (or fail to act) as the claimant did.

4. In the present case quite apart from the normal strains imposed by any pregnancy the claimant was exposed to an additional strain. She and her husband had been living in Devonshire and her husband had been posted to Crewe. As is usual in such cases the onerous burden of house hunting fell upon the claimant.

5. In October 1977 the claimant received pamphlet NI17A. She did not receive the amendment slip but I am satisfied that the amendment slip plays no part in this case. She read pamphlet NI17A and in particular pages 4 and 5 of the pamphlet dealing with contribution conditions. The first condition reads as follows:-

"Before the relevant time you must have actually paid class 1 (employee's) contributions on earnings of at least 25 times the lower weekly earnings limit or equivalent class 2 (self-employed) contributions in any one tax year. The lower weekly earnings limit is £11 in the 1975/76 tax year, £13 for 1976/77 and £15 for 1977/78. Each class 2 contribution you have paid counts as a class 1 contribution on earnings equal to the lower earnings limit.

You may also meet this condition if you have:

- i. Actually paid at least 26 class 1 or class 2 contributions before 6 April 1975.
- ii. Paid class 1 contributions on earnings well above the lower earnings limit even though your employment did not last 25 weeks".

The claimant says that she knew that she did not have the necessary number of class 1 contributions or class 2 contributions. She knew that she had not actually paid 26 class 1 or class 2 contributions before 6 April 1975. She says that she read the words "paid class 1 contributions on earnings well above the lower earnings limit even though her employment did not last for 25 weeks" but assumed quite erroneously in fact that she did not satisfy that condition. Because of that erroneous conclusion she did not make a claim for maternity allowance and it was only some time later that she discovered that in fact her contributions were such as to entitle her to maternity allowance.

6. I have some sympathy with the claimant's conclusion. Quite frankly I do not find the pamphlet easy to understand in relation to contribution condition. Bearing in mind all the facts of this case I come to the conclusion that the misinterpretation of the contribution condition was a mistake that any person not skilled in social security law would have made. On balance therefore I come to the conclusion that by reason of the factors already set out

the claimant has established good cause for the delay in making the claim for maternity allowance. Accordingly therefore she is not disqualified to maternity allowance for the inclusive period 21 November 1977 to 21 January 1978. Accordingly the claimant's appeal is allowed.

(Signed) I O. Griffiths
Commissioner

Date: 27 February 1980

Commissioner's File: C.G. 67/1978
C I O File: I.O. 1952/N/78
Region: Merseyside