

RJAT/BOS

SOCIAL SECURITY ACTS 1975 TO 1977

CLAIM FOR WIDOWS BENEFIT

DECISION OF THE NATIONAL INSURANCE COMMISSIONER

Name: Ivy May Lawton (Mrs)

Local Tribunal: Hounslow and District

Local Case: 33/1

1. This is an appeal by the claimant from the decision of a local tribunal, the effect of which was to endorse a decision of an insurance officer of 1 March 1977. By such decision awards of widow's benefits were reviewed from and including 16 December 1975 because the claimant had cohabited with a man as his wife. It was decided that the benefit was not payable, and repayment of a consequent overpayment of £1022.02 was required because the claimant had not throughout used due care and diligence to avoid such overpayment.
2. The claimant's points of appeal are contained in written submissions of 26 October, 14 November and 21 December 1978 made on her behalf by the Citizens' Rights Office of the Child Poverty Action Group. She does not appeal from the finding that at the material time she was living with a man as his wife. Her appeal disputes the finding that she did not use due care and diligence to avoid overpayment, and the sum of £1022.02 is also disputed in amount.
3. In August 1975 the man concerned left the claimant. He returned on 3 November 1975. The claimant, in receipt of supplementary benefit, reported his return, and that they were living as man and wife. It was explained to her that she could not continue to receive supplementary benefit, and her order book was withdrawn. The claimant's husband died on 14 December 1975, and widow's allowance was awarded from 16 December 1975. The order book she received warned her to read the conditions and instructions, and had she done so she would have learned that she was required to report and return the book if she lived with a man as his wife. The claimant, it is said, believed that that meant a couple had to be sleeping together, and she had a misconception of what living with a man as his wife meant, so that even if she had read the conditions and instructions she would not have taken them to apply to her. In my opinion however the claimant knew that the return of the man concerned to live with her was a material fact which affected benefit, and her failure to report it as regards her widow's benefit is inconsistent with due care and diligence. She is not to be excused because her habit is not to read anything, especially small print, and generally to be lax in attending to her affairs, such as bills, which she puts

aside unread and unpaid. It is not suggested that the claimant cannot read, and in my view the reasonable course for her to have adopted would have been to read the instructions which she was sent. Having read and considered all that is urged on her behalf I agree with the finding of the local tribunal that due care and diligence is not established.

4. As to the amount of the overpayment. It is not disputed that the amount of benefit overpaid was £1022.02, but it is submitted that the amount should be reduced by the amount that the man concerned could have claimed by way of supplementary benefit because of the effect of regulation 38 of the Social Security (Determination of Claims and Questions) Regulations 1975 [SI 1975 No 558].

5. Regulation 38(1) provides:

"Subject to paragraph (2), where -

- (a) by a decision given on appeal or review it is decided that the whole or part of any benefit under the Act for any period was not payable and but for this regulation repayment thereof would be required; and
- (b) the Supplementary Benefits Commission certifies that the claimant or some other person would have been paid supplementary benefit additional to that which was paid to him for that period had there been no overpayment of his benefit under the Act,

the decision on review or appeal shall direct that the benefit overpaid shall be treated as properly paid to the extent of the additional amount shown in the certificate."

6. Regulation 38(1)(b) calls for a certificate of the amount of supplementary benefit which would have been paid for the relevant period additional to that which was paid. It does not call for the ascertainment of what would have been paid initially had a claim been made; such an enquiry would no doubt be difficult if undertaken possibly months after the relevant period had ended. The certificate which has been provided as to the amount of additional supplementary benefit that would have been payable to the man concerned had the widow's benefit not been paid is blank as to amount, and states that he "was not in receipt of supplementary benefit during the relevant period". Since no supplementary benefit was paid no question can arise of a payment "additional to that which was paid to him".

7. Notwithstanding that there may be hard cases where supplementary benefit could have been sought or where it was not granted, I regard section 38(1) as only applying where supplementary benefit was in fact paid for the relevant period. No additional amount is shown in the certificate, and there is therefore no amount to the extent of which the benefit overpaid is to be treated as properly paid.

8. My decision is that the benefit overpaid is £1022.02, and that repayment of this sum is to be required. The appeal is disallowed.

(Signed) R J A Temple
Chief Commissioner

Date: 23 March 1979

Commissioner's File: C.G. 68/1978
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Region: London West