

CA 7/1/1978

HM/MP

SOCIAL SECURITY ACTS 1975 TO 1979

CLAIM FOR WIDOWS BENEFIT

DECISION OF THE NATIONAL INSURANCE COMMISSIONER

Decision C.G. 2/79

1. The claimant's husband died on 9 January 1975. She was then, as she still is, mentally incapable of managing her affairs. Widows benefit was claimed on 8 January 1977. A claim form was signed by her son, Mr Thomas Hanley, who expressed himself as signing on her behalf.
2. In response to the claim an insurance officer gave a decision in two parts. One related to the period more than one year before the claim date. Invoking section 82(2)(c) of the Social Security Act 1975 he disallowed benefit for this period. By the other part of his decision he disallowed benefit from 8 January 1976 to 11 October 1976 on the ground that the claim was late and that good cause was not shown for the delay.
3. Both parts of the decision were upheld by the local tribunal. In my judgment the latter part was wrong and the former part right. This means that benefit is payable from 8 January to 11 October 1976, but that it is not payable from the husband's death until 7 January 1976.
4. Section 82(2)(c)(supra) provides that benefit shall not be paid for any period more than 12 months before the date on which it is claimed. There is no escape from this provision, and it follows that the claimant is not entitled to benefit from the date of her husband's death up to 7 January 1976. As regards the period from 8 January 1976, the effect of the statutory provisions is that benefit is not payable for any period more than 3 months before 8 January 1977 (the date of claim) unless good cause is shown for the failure to claim before that date. It follows that if good cause is shown the appeal succeeds in relation to the period 8 January 1976 to 7 October 1976. It also succeeds in any event in relation to the period 8 to 11 October, for the claim was in time in relation to that period.
5. I now consider whether there was good cause for the delay in claiming. On 17 March 1977 Mr Hanley was appointed, pursuant to

regulation 26(1) of the Social Security (Claims and Payments) Regulations 1975, to exercise on the claimant's behalf any right to which she might be entitled under the Social Security Act 1975. On 29 June 1977 the Court of Protection appointed him receiver of her estate. It will be seen that both these appointments were made after benefit had been claimed. At the date of the claim neither Mr Hanley nor anyone else had any legal authority to act for the claimant in relation to her affairs, including her right to benefit. Nor was anyone under a legal duty or responsibility for the conduct of her affairs.

6. In the light of the above I find it difficult to see why the insurance officer and the local tribunal concluded that the claimant did not have good cause for her late claim. The local tribunal relied in support of their decision on a finding that Mr Hanley "obtained Letters of Administration to his mother's estate about October 1976 and was thereafter legally in charge of her affairs". I find it difficult even to guess what they meant by this. Letters of administration to the claimant's husband's estate were granted in September 1976, and Mr Hanley was one of the administrators. The only relevance of this grant is that Mr Hanley, who has a brother and sister who live abroad, told the local tribunal that about the time it was made he realised that he ought to take charge of his mother's affairs, and that he actually did so in October 1976.

7. Both insurance officers in their submissions draw attention to the fact that Mr Hanley took charge of his mother's affairs in October 1976, and they also draw attention to the fact that he claimed benefit on her behalf. From this they deduce that he was what they term the claimant's "agent", and they submit that it was his duty and responsibility to ascertain that she was entitled to widows benefit and to claim it within the statutory time limit. This argument was accepted by the local tribunal. I hope I will be forgiven for saying that it seems to me to involve loose thinking.

8. I accept that where an appointment is made by the Secretary of State under regulation 26(1)(supra), the appointee from the date of his appointment stands in the claimant's shoes as regards things which require to be done for the purpose of asserting the right to benefit. It follows that if a question of good cause for a late claim arises, the appointee's acts and omissions subsequent to his appointment are relevant considerations. The same is of course true of things done or left undone by a receiver after the date of his appointment. Mr Hanley was not appointed to act on behalf of the claimant until March 1977, and the date of claim has been accepted as 8 January 1977.

9. As I have sought to make clear Mr Hanley took it upon himself to claim benefit for his mother. He had no authority to do so, and his responsibility towards her was a purely moral one. I am not suggesting that the Department ought not to have accepted the claim. On that I express no view save that acceptance of the claim was in accordance with what I believe to be the usual practice and one which is clearly beneficial to incapacitated claimants. What seems to me clear, however,

is that in determining whether there was good cause for the late claim it is wholly irrelevant to enquire whether Mr Hanley ought to have claimed or taken steps as regards claiming before 8 January 1977. In particular it seems to me that the insurance officer now acting in the case is misconceived in relying, as he does, on Mr Hanley's statement that the reason he did not make an earlier claim was that he was unaware that his mother was entitled to benefit. This statement leads the insurance officer to submit, quoting the well known passage in Decision R(S) 2/63 (paragraph 13), that it was Mr Hanley's duty to find out what were the claimant's rights and how and when they should be asserted. I find that entirely unacceptable. If a person takes it on himself to claim benefit on behalf of a claimant who is unable to act, I see no justification for penalizing the claimant merely because that person fails to act earlier. To conclude otherwise would it seems to me be not merely unfair but dangerous. The question in late claim cases whether the claimant had good cause for delay. In deciding that question, it is not permissible to attribute to the claimant the acts and omissions of some person who has elected without authority to interfere in his affairs.

10. Both insurance officers concerned in this case seem to have thought that Mr Hanley was authorised to act for the claimant before he was appointed to do so in March 1977. They speak of him, as do the local tribunal, as being the claimant's agent from October 1976 onwards. It is unnecessary for me to determine what would have been the position had that assumption been accurate. I am however reluctant to let pass without comment what, judging from the submissions in this case, seems to be a generally accepted view among insurance officers. Injustice to claimants could result. The way the insurance officer acting in the appeal puts it is that in every case in which a claimant makes a late claim through an agent, "it is the agent who has to show that there was good cause for the agent's failure to make the claim before the date on which the claim was in fact made". Although as I have said that is right in the case of an appointee acting under regulation 26(1)(supra), it seems to me to be of very doubtful validity as a general proposition in relation to cases in which a claimant claims benefit through an agent authorised by him (the claimant) in such behalf. I cannot accept that in considering whether there is good cause for a late claim in such cases, you must invariably treat the claimant as responsible for the acts and omissions of his agent. If a claimant appoints a properly qualified agent (for example, a solicitor) to act for him in National Insurance matters, it seems to me that he is entitled to rely on the agent to claim benefit within the prescribed time limit; and the decided cases support this view (cf Decision C.S. 50/50 (KL) (reported); R(G) 17/52). In support of his argument the insurance officer refers me to Decision R(S) 2/51. The case was concerned with a nun living in a convent who had entirely withdrawn from the world. She took no interest in and gave no thought to mundane affairs in general and to her benefit rights in particular. A late claim for sickness benefit was made by someone in the convent ostensibly on her behalf but apparently without her knowledge. It seems to me obvious on those facts that the claimant could not establish good cause for her late claim, and the Commissioner so held. Unfortunately he seems to me, with respect, to

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have arrived at his conclusion by a faulty process of reasoning. He chose to infer that the claimant had authorised the person who had made the claim to act for her, and he then equated her position to that of someone unable to act who makes a late claim through an appointee under what is now regulation 26(1). This overlooks the distinction between an appointee under regulation 26(1) acting for an incapacitated person and an agent acting on the claimant's own authority.

11. My decision is:-

- i. that widows benefit is not payable for the inclusive period 14 January 1975 to 7 January 1976;
- ii. that the claimant is entitled to such benefit for the inclusive period 8 January 1976 to 11 October 1976.

(Signed) Hilary Magnus
Commissioner

Date: 25 July 1979

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Region: North Western (Manchester)