

## DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is an appeal by the Claimant, brought with the leave of the chairman, against a decision of the Stoke-on-Trent Appeal Tribunal. For the reasons set out below I dismiss the appeal.
2. The short issue raised by the appeal is whether a valid claim to income support is made where, notification of intention to make the claim having been made by or on behalf of the claimant during his life, the claim form is then completed and submitted, after the claimant's death, by the executor appointed by his will, within the statutory 1 month period from the date of first notification.
3. On 21 December 2001 the Claimant moved to a nursing home from hospital, and on that same date an income support claim form was requested by the hospital social worker on behalf of the Claimant. Unfortunately, there was some delay in sending out that form – it was not sent out until 7 January 2002, the day on which the Claimant unhappily died. The Claimant's niece (who is also the executor appointed by his will), having collected the necessary information, completed and signed the form on 18 January 2002, and handed it to the relevant office on that same day.
4. By a decision made on 22 March 2002 the claim was rejected on the simple ground that no valid claim had been made because the Claimant had died before the claim form was signed and submitted, and the Tribunal upheld that decision. What is in issue is of course entitlement to income support in respect of the period between 21 December 2001 and 7 January 2002.
5. The initial written submission of the Secretary of State supported this appeal. However, in view of the fact that the outcome might be of wider importance I directed an oral hearing, at which the Claimant was not represented but the Secretary of State appeared by Miss Deborah Haywood of the Office of the Solicitor to the Departments of Health and Work and Pensions. At the hearing Miss Haywood submitted that the Tribunal's decision was right.
6. Reg. 6(1A)(b) of the Social Security (Claims and Payments) Regulations 1987 ("the 1987 Regulations") provides that where a properly completed claim is received in an appropriate office within one month of first notification of intention to make the claim, the date of claim shall be the date on which that notification is deemed to be made or the first day in respect of which the claim is made if later. By Reg. 6(1A)(c) a notification of intention to make a claim will be deemed to be made on the date when an appropriate office receives either a notification in accordance with Reg. 4(5) or a defective claim. By Reg. 4(5) a person who notifies an appropriate office (by whatever means) of his intention to make a claim shall be supplied with a claim form.
7. In this case notification of intention to claim was made on 21 December 2001, and the form was actually submitted within the 1 month period. But for the Claimant's death, there is therefore no doubt that a valid claim would have been made on 21 December 2002. The position of the Claimant immediately before his death was therefore that, if he submitted the claim by 21 January 2002, it would take effect from 21 December 2002. However, there is no provision in the 1987 Regulations or elsewhere which says what is to happen in the situation where a person dies after a claim form has been requested but before it has been submitted.

8. The 1987 Regulations do, however, of course deal specifically with a number of other situations, including some of those which can arise on death, and it is necessary to examine the position more generally in order to get an overview of the statutory scheme.
9. First, as regards claims by living claimants, Reg. 4(1A)(a) provides that a claim for income support shall be made in writing on a form approved by the Secretary of State for the purpose. By Reg. 4(1A)(b) and (c), unless any of the reasons specified in para. (1B) applies the claim shall be made in accordance with the instructions on the form. One of the reasons specified in para. (1B) is that, (i) owing to physical, learning, mental or communication difficulty the claimant is unable to complete the form in accordance with the instructions and (ii) it is not reasonably practicable for the claimant to obtain assistance from another person to complete the form. By Reg. 4(1C), if the claimant is unable to complete the form for that reason, "he may so notify an appropriate office by whatever means."
10. The claim form in this case contains, of course, a space at the beginning for the claimant's name. The Claimant's niece filled in the deceased's name. At the end is a box, opposite which is stated: "Please sign the form here. Your signature." Then underneath that is the following: "If you are signing this form for someone else, please read the notes in Part 10 of the information booklet *How to make your claim* that came with this form." Then there is a question: "Have you signed this form for someone else?" If so, the person signing is asked to give some details. The Claimant's niece signed the form herself and gave the relevant details about herself.
11. The relevant note in the information booklet was as follows:

***Your declaration***

It is important that you sign and date the claim form. If you do not, we will have to send it back to you.

**Can I sign the claim form for someone else?**

You should only sign the claim form on behalf of someone else if:

- The person who is making the claim is not mentally able to act on their own behalf, and
- You are willing to act on their behalf in all social security matters, including telling us about any change in their circumstances and collecting their money for them.

You should **not** sign the claim form for someone who **is** mentally able to manage their own affairs. Someone who is physically disabled but mentally able will not normally need someone to act on their behalf.

**I want to act for someone who is not mentally able to manage their affairs. What happens next?**

We will get in touch with you to arrange an interview with you and the person making the claim. We will decide whether the person needs someone to act on their behalf for all social security matters. We call these people appointees. We will explain the responsibilities of appointees to you.

**I have power of attorney for the person making the claim. What should I do?**

If you have power of attorney or any legal authority to act on behalf of the person making the claim, please sign the claim form on their behalf and send us a true copy

of your authority with the claim form. A true copy must be certified and signed by a solicitor as a true copy. We will get in touch with you if we need more details.”

12. Reg. 33 of the 1987 Regulations empowers the Secretary of State, in the event of a claimant or prospective claimant being “unable to act”, to appoint a person “to exercise, on behalf of the person who is unable to act, any right to which that person may be entitled and to receive and deal on his behalf with any sums payable to him.”
13. I am prepared to assume in the Claimant’s favour (but without deciding) that, in the case of a living person, even if there is no appointee under Reg. 33, the combined effect of Regs 4(1A), (1C) and the standard form of claim form which was supplied in this case, together with the accompanying note which I set out above, is that the claim form can be signed and submitted by someone else on behalf of the claimant in the event either of mental incapacity or of he (the claimant) having duly authorised someone else to sign and submit the form on his behalf. However, none of the provisions or documents which I have mentioned so far make any specific reference to the position on death, which is dealt with generally by Reg. 30.
14. By Reg. 30(1), “on the death of a person who has made a claim for benefit, the Secretary of State may appoint such person as he may think fit to proceed with the claim.” That does not help in the present case, because of course no claim had been made by the date of the deceased’s death. Reg. 30(2) provides for the payment or distribution by the Secretary of State of “any sum payable by way of benefit which is payable under an award on a claim proceeded with under paragraph (1).” Reg. 30(3) provides for the payment or distribution of sums “payable by way of benefit to the deceased, payment of which he had not obtained at the date of his death.” In the situations provided for by Regs. 30(2) and (3) the benefit may be paid “to or amongst persons over the age of 16 claiming as personal representatives, legatees, next of kin, or creditors of the deceased .....” Regs. 30(1) to (3) show that entitlement to benefit in respect of a deceased person accrues for the benefit of the estate. It has been held that, even without an appointment under Reg. 30(1), a decision in respect of a claim made by a person who has since died can be made after the death where there is an executor (CIS/379/1992), and that the executor or a duly appointed personal representative has standing to pursue an appeal, provided that the grant of letters or administration are submitted to the tribunal prior to the hearing (R(SB) 8/88).
15. Reg. 30(5) provides that, where certain conditions are satisfied, “a claim may be made on behalf of the deceased to any benefit other than .... income support ..... to which he would have been entitled if he had claimed it in the prescribed manner and within the prescribed time.” One of the conditions for such a claim is that the Secretary of State has, on application made within 6 months (or longer if an extension is granted) of the death, appointed a person to make the claim. By Reg. 30(7) “a claim made in accordance with paragraph (5) ... shall be treated, for the purposes of these regulations, as if made by the deceased on the date of his death.”
16. It is to be noted that Reg. 30(5), which is the only provision dealing with the position of people who could have made a valid claim before their death but did not do so, specifically does not apply to income support. The provision in Reg. 30(7) that a claim made on behalf of the deceased under Reg. 30(5) is treated as made on the date of death would in any event have deprived Reg. 30(5) of much of its utility in relation to income support, because income support must be claimed from the day of entitlement. However, it would not have deprived Reg. 30(5) of all its utility, owing to the

backdating provisions in Regs. 19(4) and (6), which do apply to income support. Thus, had Reg. 30(5) applied to income support, it would have been possible, in the case (for example) of a person who could not reasonably make a claim because he was ill, for a claim to be made after his death under Reg. 30(5) and for that claim then to be backdated under Reg. 19(4) for up to 3 months prior to his death. The position in respect of income support (and the other benefits to which Reg. 30(5) does not apply), is therefore in stark contrast with that which applies to those benefits specified in Reg. 19(2), which are automatically backdated for 3 months. In respect of those a claim can be submitted under Reg. 30(5) after the date of death, and the claim will be backdated under Reg. 19(2) to 3 months before the date of death.

17. Having dealt with the statutory scheme for making claims, so far as relevant, I return to the position in the present case. The following argument can be made on behalf of the Claimant:
- (1) The general position emerging from Reg. 30(1), (2) and (3) is that accrued entitlements to social security benefits do not abate on death but accrue for the benefit of the deceased's estate.
  - (2) A person who has given notification of intention to claim income support has, provided he submits the claim form within a month, done what is necessary to fix the date of claim, and there is, especially in the light of (1) above, no reason why, in the event of his death before the claim form is submitted, his estate should be in a worse position
  - (3) An executor, who derives his title from the will, stands in the deceased's shoes as from the date of death, and should be considered to have authority to sign and submit the claim form after the death and so as it were perfect the claim. It would be anomalous if that were not so, given that during the claimant's life claim forms can, even without an appointment under Reg. 33(1), be signed and submitted on behalf of a claimant who is unable to act or who has duly authorised an agent to do so.
  - (4) Reg. 30(5) is dealing only with the death of a claimant who has not made a claim within the prescribed time or manner, and therefore the fact that it expressly does not apply to income support does not harm the Claimant's case. That case is simply that the effect of Reg. 6(1A)(b) is that submission of the claim form within one month of notification of intention to claim has the effect that the claim was made within the prescribed time.
18. That is an attractive and powerful case, but for the following reasons I am unable to accede to it.
- (1) It is in my judgment an inescapable fact that a person who by the date of his death has merely given notification of intention to claim has not in fact made a claim. His position immediately before his death is that, *if* he makes a valid claim within the one month period, it will be treated as having been made when notification of intention to claim was given.
  - (2) Once the potential claimant has died, he is no longer a person who can claim or on whose behalf a claim can be made. No-one can purport to act as agent for a deceased person: hence the rule that all agency is terminated by death:

*Campanari v. Woodburn* (1854) 15 C.B. 400. An executor represents the estate of the deceased, but cannot be an agent for the deceased.

- (3) It therefore in my judgment follows that express or implied statutory authority is required to enable a claim to be made in respect of a deceased person. There is nothing in the 1987 Regulations which expressly permits such a claim to be made in the case of income support. Reg. 30(5) is the only provision permitting claims to be made in respect of deceased persons, and that expressly does not apply to income support.
- (4) Nor can one derive any sort of implication from the scheme in the 1987 Regulations that, where notification of intention to claim income support was given by or on behalf of the deceased during his life, the executor is entitled to make the claim in respect of the deceased and so as it were perfect it. Indeed, the absence of any express provision for the making of the claim in such circumstances suggests the contrary implication, because to permit the executor to sign and submit the claim form would only of course be a solution in cases where the deceased made a will and appointed an executor. It is difficult to see why the legislature should have intended such cases to be treated more favourably than those (which must be very common where small estates are concerned) where the deceased died intestate, and where there is therefore on any view no person who could have authority to sign and submit the claim form.

19. It follows that, for the reasons set out above, I must dismiss this appeal. Like the Tribunal (see para. 6 of its reasons) I have no jurisdiction to deal with any entitlement to compensation which the Claimant's estate may have in respect of the delay in sending out the claim form.

**(Signed) Charles Turnbull  
Commissioner**

**29 May 2003**