

DUMMAM

JBM/7/CAS

Commissioner's File: CS/351/92

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the Plymouth Social Security Appeal Tribunal dated 12 August 1992 is erroneous in point of law. Accordingly I set it aside and give the decision that the appeal tribunal themselves should have given namely that the claimant's entitlement to invalidity benefit ended at age 65.

2. This is an appeal by the adjudication officer with the leave of the tribunal chairman against the decision of the appeal tribunal in respect of the decision of the adjudication officer first involved in these appeals.

3. The facts of the case are dealt with in the written submission of the adjudication officer first involved in these appeals to the appeal tribunal. In respect of those matters and of the submissions of the adjudication officers then and now involved in these appeals dated 24 November 1992 and September 1993 and 30 September 1995 the claimant has had the opportunity to comment at the relevant stages and I have through the claimant's representatives their most recent comments dated 3 November 1995 which are "I have no comments to make."

4. The relevant law (both statutory and otherwise) is adequately dealt with in the submissions of the adjudication officers then and now involved in these appeals. Nothing is to be gained by my rehearsing that law here afresh. I would only add that as well as National Law of Great Britain involving the Social Security Contributions and Benefits Act 1992 section 122 the law of the European Community is relevant being Directive 79/7/EEC. The delay involved in my giving a final decision in

this case results from appeals in the National Court and also by reason of decisions of the Court of Justice of the European Communities. In particular the latest judgment is the decision of the European Court of Justice in the case of the Secretary of State and the Chief Adjudication Officer v. Graham, Connell and Nicholas (ECJ case reference 92/94) a copy of which judgment is contained at pages 117 and following of the case papers. On 3 February 1993 I made the following direction:-

"I defer dealing with this case until the outcome of the House of Lords reference to the European Court of Justice in Thomas. I require a submission within 30 days of the final decision of the House of Lords (following receipt of the reference) on the effect on the instant case. Claimant to have a further 30 days for observations when the issue of an oral hearing can also be considered."

Thereafter I made the following direction dated 1 October 1993 after receipt of the submission of the adjudication officer then involved in these appeals dated 9 September 1993 and the claimant's representative's observations dated 24 September 1993:-

"I defer giving a decision until the Court of Appeal has finally decided the appeal in CS/27/91. I require within 30 days thereafter a full submission by the adjudication officer as to the then position in the instant case. Claimant to have 30 days thereafter for observations.

In the light of paragraphs 17 and 18 of the submission dated 9 September 1993 I can see no useful purpose in pursuing the issues at this stage."

In response to that direction I receive the adjudication officer now involved in these appeals made his submission dated 3 September 1995 dealing with the Graham case.

5. In my judgment the decision of the appeal tribunal is erroneous in point of law. The history and relevant submissions of the adjudication officers then involved and now in these appeals are detailed above in this submission. I reproduce immediately below so far as relevant the submission dated 30 September 1995:-

"1 .....

2. The question at issue in this appeal is whether the claimant can continue to receive invalidity benefit up to age 70, which is the age at which a man stops being entitled to invalidity benefit. In accordance with section 33(1) of the Social Security Contributions and Benefits Act 1992 a woman's entitlement to invalidity benefit must end at age 65.

3 .....

4 .....

5. As a result the ECJ decided that the link between the rate of invalidity pension paid at pension age and the potential rate of retirement pension is not contrary to Directive 79/7.

6. In view of the ECJ's decision it is my submission that invalidity benefit is an income replacement benefit. That is, it is paid during a person's working life because that person is unable to work. Because invalidity benefit is an income replacement benefit I submit that there is a necessary link with the pension ages prescribed for retirement pension purposes. As a result I submit that it is also not contrary to Directive 79/7 to link the upper age limit for entitlement to invalidity benefit to the different pension ages for men and women for retirement pension purposes.

7. A man can become entitled to retirement pension when aged 65 and can potentially remain entitled to invalidity benefit for 5 years after that age until aged 70. In contrast a woman can become entitled to retirement pension when 60 years old and can potentially remain entitled to invalidity benefit until she is 65 years old.

8. A man's working life is regarded as ending at age 65 with a possible extension for a further 5 years to age 70. A woman's working life is regarded as ending at age 60 with the same possible extension of 5 years. In this case up to age 65.

9. In view of the above I submit that the tribunal erred in law in deciding that the claimant could remain entitled to invalidity benefit up to age 70."

10. ...."

I adopt the above as part of my judgment.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. The facts are fully before me and in accordance with section 23(7) of the Social Security Administration Act 1992 I give the decision that the appeal tribunal themselves should have given namely that the claimant's entitlement to invalidity benefit ended at age 65. I need hardly add that a substantial part of the plethora of legal learning now available was of course not available to the appeal tribunal.

7. Accordingly the adjudication officer's appeal succeeds.

Signed: J B MORCOM  
Commissioner

Date: **-4 JAN 1996**