

WIDOW'S BENEFIT

Adjudication : (1) Recording by local tribunals of their decisions, of the grounds therefor and of their findings of fact material thereto :

(2) evidence—need for explanation of the circumstances in which a signed statement is given.

(1) The Commissioner directs the attention of local tribunals to the mandatory terms of regulation 14(1) of the National Insurance (Determination of Claims and Questions) Regulations, dealing with the recording of their decisions, and comments on the need, in the interests of justice, for Chairmen to have special regard to it, and in particular to paragraph (b) thereof, requiring a record of the grounds of their decisions and of their findings of fact.

(2) The Commissioner points to the undesirability of any written statement, particularly one which may have a possible prejudicial effect on a claimant's case, being put before the statutory authorities, without a clear explanation of how it came into existence and of the circumstances in which it was made and signed.

1. My decision is that widow's benefit was not payable to the claimant from the 29th August 1961 to the 12th February 1962 (both dates included) and, as I am not satisfied that the claimant acted in good faith in all respects as to the obtaining and receipt of benefit she must be required to repay to the National Insurance fund the amount of £99 10s. 0d. overpaid to her by way of benefit during that period.

2. The first question which falls to be decided in this appeal by the insurance officer is whether during the period mentioned above the claimant (whose husband died on the 3rd August 1959) was disentitled to widow's benefit under the proviso to section 17(2) of the National Insurance Act, 1946, by which it is provided that benefit shall not be payable for any period during which a widow is cohabiting with a man as his wife.

3. The local insurance officer decided that during the period in question the claimant was cohabiting with a man named H. as his wife, and that accordingly widow's benefit was not payable to her, and the decision by which the claimant had been awarded widow's benefit was therefore reviewed. The decision on review was given on the 6th February 1962 (i.e. before section 9 of the Family Allowances and National Insurance Act, 1961 came into force) and accordingly the question whether the claimant should be required to repay to the National Insurance fund the widow's benefit of which she had been in receipt from the 29th August 1961 to the 12th February 1962 fell to be decided under regulation 21(1) of the National Insurance (Determination of Claims and Questions) Regulations, 1948 [S.I. 1948 No. 1144].

4. The insurance officer was not satisfied that the claimant had acted in good faith in all respects as to the obtaining and receipt of widow's benefit and, as he was bound to do, he required repayment to the National Insurance fund of the amount of £99 10s. 0d. which had been overpaid to the claimant by way of benefit between the 29th August 1961 and the 12th February 1962. However, the local tribunal, to whom the claimant appealed against the insurance officer's decision, allowed her appeal on finding that she had not been cohabiting with a man as his wife, and accordingly the question of the claimant's good faith did not fall to be considered by the tribunal.

5. The local tribunal's findings on questions of fact material to their decision were recorded in the following terms "The tribunal considers

that the evidence does not indicate that the claimant was cohabiting with a man as his wife”, and the full text of their unanimous decision reads as follows—“ Appeal Allowed. Widow’s benefit is payable from and including 29.8.61.”

6. The insurance officer appealed to the Commissioner against the tribunal’s decision and since, from the claimant’s point of view, the question at issue is obviously an important one involving, as it does, a large sum of money, it seemed to me that the proper course was to direct an oral hearing of the insurance officer’s appeal. The claimant was accordingly duly notified of the time and place of the hearing but, although she was pressed in her own interests to attend, she said that she would be unable to do so because she had no one with whom she could leave her two children. The appeal was, nevertheless, heard at an oral hearing at which evidence was given by an inspector of the Ministry of Pensions and National Insurance who had interviewed the claimant and other persons connected with the case, and by a Mr. M. who was the landlord of the cottage in which, it was alleged, the claimant had cohabited with H. as his wife.

7. In all cases which turn mainly on questions of fact, and on the inferences to be drawn from the evidence, it is obviously of great assistance to the adjudicating authority to see the witnesses, and to be able to observe their demeanour when giving evidence, and it is, of course, particularly desirable to do so in a case in which a person’s honesty and good faith may be impugned. In the present case I have not had the advantage, which the local tribunal had, of seeing the claimant and hearing her evidence and before proceeding to consider the merits of the case I desire to make some general observations on what seems to me to be a matter of importance in the adjudication of cases by local tribunals.

8. Proceedings before a local tribunal are of great importance to a claimant. The tribunal is composed of men and women chosen for their intelligence and common sense who have knowledge of local conditions and, since they sit in the locality in which, as a general rule, those who appear before them live and work, the claimant, and any witnesses who may be required, can attend before them without undue inconvenience or expense. The tribunal thus have the advantage of being able to hear all the relevant evidence and can, moreover, observe the demeanour of those who give it, with the result that they are in all respects peculiarly well equipped as a fact finding body. Regulation 14(1) of the National Insurance (Determination of Claims and Questions) Regulations, 1948 therefore provides that a local tribunal *shall* (the italics are mine)

- (a) record in writing all their decisions (whether on an appeal or on a reference from an insurance officer) ; and
- (b) include in the record of every decision a statement of the grounds of such decision and of their findings on questions of fact material thereto.

9. The obvious intention of that regulation is to enable it to be clearly understood why the tribunal decided as they did and, if the requirements of the regulation are not complied with, a claimant may well be at a disadvantage in challenging the decision on appeal or, in the case of an appeal by the insurance officer, in seeking to uphold it. Furthermore the failure to make any proper findings of fact, and the omission adequately to record the grounds upon which a decision is based, tends to increase the number of appeals to the Commissioner that have to be heard at an

oral hearing, which not only causes delay in the final adjudication of the case, but also results in the additional expenditure of public funds. In the interests of justice therefore, and for the benefit of all concerned, Chairmen of local tribunals should always have special regard to the requirements of regulation 14(1) (and in particular to paragraph (b) thereof) and in this connection I desire to draw attention to Decision R(U) 16/60 and to paragraph 23 of Decision R(I) 81/51 and paragraph 35 of Decision R(I) 42/59.

10. In the present case the local tribunal did not comply with the requirements of regulation 14(1) referred to above. They neglected to record any grounds for their decision and their only finding of fact (if it can be so called) was that they considered that "the evidence did not indicate that the claimant was cohabiting with a man as his wife". But they gave no reasons for coming to that conclusion and there is, therefore, nothing to show why they decided as they did; nor is there in the record of the proceedings any indication of the weight they attached to the not inconsiderable body of evidence before them. In a case the decision of which turns almost entirely on questions of fact it is particularly unfortunate that the record of the proceedings before the tribunal is deficient in these respects; and I may add that it would have been more helpful if the claimant's own evidence had been recorded more fully than it was by the Chairman. He will, I hope, not think me unduly critical if I direct his particular attention to the observations of the Commissioner in the last two decisions referred to above.

11. The evidence before the tribunal, apart from that of the claimant herself, consisted of the reports of the inspector of the Ministry of Pensions and National Insurance of his interviews with the claimant and with H., and of written statements which they, Mrs. H. and Mr. M., had made, but, before considering the evidence, there is a further matter of general import to which I would refer. It arises out of a statement which purports to have been signed by the claimant on the 13th February 1962, and which begins as follows: "I wish to inform you that I ceased to cohabit on Friday the 9.2.62 . . . and I should be grateful if you would restore my widowed mother's allowance." On the face of it that statement (which bears a stamp showing that it was received by hand at the local Pensions and National Insurance office on the 13th February 1962) appears to be a confession that the claimant had been cohabiting with a man but there is nothing to show (and the insurance officer's representative at the hearing of the present appeal was unable to tell me) in what circumstances, or where, it was made. The statement was referred to by the local insurance officer in his submission to the local tribunal but, quite properly in my opinion, the insurance officer now concerned with the case omits all reference to it in her submission on the appeal to the Commissioner. I have drawn no inference adverse to the claimant from the statement since, as it seems to me (judging from her other communications), the phraseology used is almost certainly not that of the claimant, and in my opinion, when a statement which is open to a construction unfavourable to a claimant is put before the local tribunal, or the Commissioner, there should always be a clear explanation of how it came into existence and of the circumstances in which it was made and signed.

12. In the present instance there is no such explanation and if I had not thought it right to draw attention to the possibly prejudicial effect which unexplained, and *prima facie* incriminating, statements may have, I should have ignored this particular statement altogether. I do not, of

course, wish to be taken as suggesting that statements should not be taken from a claimant, and from other persons who may be able to throw light on the particular question at issue, and I do not for a moment question the propriety of that practice which has obvious practical advantages; nor do I suggest for a moment that there was any impropriety in the taking of the particular statement to which I have referred. It is, however, to be remembered that the surrounding circumstances may have considerable evidential value when considering what weight, if any, to attach to a written statement, more particularly when it appears on the face of it that it was not the claimant's own unaided statement, and that it is undesirable that written statements should be put before the adjudicating authority without any explanation of how they came to be made; *a fortiori* when they may have a possibly prejudicial effect on the claimant's case.

13. I now turn to the merits of the case, and I say at once that in coming to the conclusion to which I have felt compelled to come I have thought it right in the circumstances in which the case comes before me to have regard—and to have regard only—to facts which are largely undisputed and to the statements made by the claimant herself to the inspector and to Mr. M. (both of whom impressed me as being entirely reliable witnesses) and to what the claimant said in evidence before the local tribunal. Accordingly I have excluded from my mind the statements made by H. and those made by his wife, who is clearly strongly prejudiced against the claimant.

14. On that basis my findings of fact are as follows:—Prior to July 1961 the claimant and H. lived in a small town or village in County Durham, she being a widow with two children and he being a married man. Mr. and Mrs. H. (so far as I am aware) lived together in their own house and the claimant lived in a council house of which she was the tenant. In July 1961 H. left his wife and moved to a village in Bedfordshire where he went into occupation of a cottage belonging to Mr. M. as (I think) a weekly tenant. The cottage contained three bedrooms upstairs and a kitchen and two living rooms downstairs. It was fully furnished but by arrangement with Mr. M. some of the furniture was moved out of the cottage and the remainder was stored in the back bedroom. On the 28th August 1961 the claimant, having given up the tenancy of her council house, also left County Durham and went to the village in Bedfordshire taking her two children with her. She also took with her sufficient furniture to furnish the cottage which she occupied (to use a neutral word) with H. until the 10th February 1962. I further find (contrary to the claimant's contention) that she and H. occupied, not only the same bedroom, but the same bed, that she referred to H., at least at times, as "her husband" and that letters arrived at the cottage addressed to "Mrs. H." Admittedly the claimant did the household catering and, presumably, the cooking and other work of the house, and admittedly H. paid, or at least was liable for, the rent of the cottage and also gave the claimant a weekly sum of money when (but only when) he was in employment. Further I am satisfied that when the claimant was interviewed by the inspector of the Ministry of Pensions and National Insurance she admitted that she and H. were living together as man and wife and that, after being cautioned that she was not obliged to say anything regarding the matter unless she wished to do so but that whatever she did say would be taken down in writing and given in evidence, she said that she had been living with H. since the 28th August 1961. I also accept that after signing a caution in the same terms she made a statement in which she said "I have no explanation

to make. I have not been receiving any money other than my pension and family allowance."

15. It does not, of course, necessarily follow from the fact that a man and woman are living under the same roof that the woman is cohabiting with the man as his wife within the meaning of the proviso to section 17(2) of the National Insurance Act, 1946. Their relationship may be no more than that of landlady and lodger, or housekeeper and employer, but "if she and he are carrying on a common home in the manner in which husbands and wives do" there is a strong presumption that they are cohabiting within the meaning of the proviso. Compare Decision C.G. 214/50 (reported). On the facts found above the unavoidable conclusion is, in my opinion, that the claimant and H. were carrying on a common home in the manner in which husbands and wives do and, although I have given full weight to the fact that the local tribunal had the advantage of seeing the claimant and observing her demeanour as a witness, I can find no support for their finding that the evidence does not indicate that she was cohabiting with H. as his wife. In my judgment the clear and unavoidable inference is that she was doing so and I therefore find that, by reason of the proviso to section 17(2) referred to above, widow's benefit was not payable to the claimant from the 29th August 1961 to the 12th February 1962. The question accordingly arises whether she must be required to repay to the National Insurance fund the amount overpaid to her by way of benefit during that period and since, as mentioned above, the local insurance officer's decision was given before section 9 of the National Insurance and Family Allowances Act, 1961 came into force, that question falls to be determined under regulation 21(1) of the National Insurance (Determination of Claims and Questions) Regulations, 1948. See Decisions R(G) 9/62 and C.S. 2/62 (not reported). That is to say repayment must be required unless it is shown that the claimant acted in good faith in all respects as to the obtaining and receipt of benefit.

16. Admittedly the claimant continued to cash the orders in her widow's benefit allowance order book throughout the period in question and each time she did so she signed a declaration that she had read and understood the instructions contained in the book, and that she was entitled to the sum named in the order. The material instruction in the order book informed the claimant that she must not cash any more orders without the authority of the Ministry if she was cohabiting with a man as his wife, and she was further informed, under the heading "Special Notes" (which is printed in bold type), that "A woman is not entitled to payment of a Widowed Mother's Allowance for any period during which she is cohabiting with a man as his wife." The claimant frankly admitted to the inspector that she had read the instructions and warnings in her order book and she cannot therefore have failed to realise that she was not entitled to the sums which she received when cashing her orders. Nevertheless she continued to cash the orders without disclosing the true position to the Ministry of Pensions and National Insurance and in those circumstances I find it impossible to be satisfied that she acted in good faith in all respects as to the obtaining and receipt of her widow's benefit during the period under review. She must accordingly be required to repay to the National Insurance fund the sum of £99 10s. 0d. overpaid to her by way of benefit during the period in which she was cohabiting with H. as his wife.

17. I must allow the insurance officer's appeal.
