
Good faith—claimant's agent not formally appointed

A retirement pensioner was in hospital for over a year and was incapable of acting for himself. These facts were not communicated to the Ministry until after his discharge. With the pensioner's apparent approval, his son acted as his agent, although not then appointed by the Minister so to act, and drew the pension in full, incurring an overpayment.

Held that the actions of the son in obtaining benefit must be treated as done by the pensioner, and that, as he had not satisfied the determining authorities that he had acted in good faith in all respects, the pensioner was required to repay the sum overpaid. Decision C.W.G. 6/50 (reported) compared.

1. My decision is that the claimant's retirement pension fell to be reduced by 6s. 6d. a week from the 12th February, 1954 to the 26th August, 1954, by 12s. 6d. a week from the 27th August, 1954 to the 16th December, 1954 and by 26s. a week from the 17th December, 1954 to the 1st January, 1955 all dates included and that the claimant has been overpaid on account of his pension the sum of £21 17s. 0d., which sum he is required to repay to the National Insurance Fund.

2. The claimant was awarded a retirement pension at the rate of 34s. a week (including an increment of 1s. 6d. a week on account of additional contributions paid after attaining pensionable age and before retirement) from the 28th May, 1952. On the 7th December, 1953 he was admitted to hospital and discharged on the 14th December, 1953, but readmitted on the 24th December, 1953 and finally discharged on the 1st January, 1955. These facts were first communicated to the local insurance office on the 4th January, 1955 and then not by the claimant, or anyone acting for him, but by the hospital authorities. It is not disputed that during these periods in hospital the claimant was in receipt of free in-patient treatment within the meaning of the National Insurance (Hospital In-Patients) Regulations, 1949 [S.I. 1949 No. 1461], as amended by the National Insurance (Hospital In-Patients) Amendment Regulations, 1952 [S.I. 1952 No. 2179].

3. It appears that since the claimant was first admitted to hospital his son has been acting for him with his concurrence in obtaining payment of his pension. The son, who was appointed by the Minister on the 28th February, 1955, owing to the claimant's inability to act for himself, to exercise on behalf of his father any right to which the claimant may be entitled under the National Insurance Acts has explained that his father was not in complete control of his mental faculties on account of complete paralysis on the left side and that, consequently, he (the claimant's son) had signed in his father's presence the authority on the back of the pension order forms, authorizing him (the son) to receive the pension and the declaration on the face of the forms, which enabled him to receive payment of the pension. He has, accordingly, pointed out that such fault, if any, as may have occurred must be attributed to him and not to his father. I agree, subject to the considerations hereafter to be dealt with.

4. As a consequence of the claimant's admission to hospital the rate of his retirement pension (apart from the increment of 1s. 6d. a week referred to above) fell to be reduced from the 12th February, 1954 to the 26th August, 1954 both dates included to 26s. a week (that is to say by 6s. 6d. a week), from the 27th August, 1954 to the 16th December, 1954 both dates included to 20s. a week (that is to say by 12s. 6d. a week) and from the 17th December,

1954 to the 1st January, 1955 both dates included to 6s. 6d. a week. (See Regulations 3, 4, 5 and 12(3) of the above-named regulations.) In this connection it is to be noted that the claimant's wife died on the 26th August, 1954 and that up to, but not after, that date he had a dependant within the meaning of those regulations. It was that fact which caused the change of rate on the 27th August, 1954. By reason of the facts set out above, however, the claimant continued to receive his pension throughout the above-named periods at the full rate awarded to him, with the result that he has been overpaid on account of that pension the sum of £21 17s. 0d.

5. That sum he is required to repay to the National Insurance Fund by reason of the provisions of Regulation 21(1) of the National Insurance (Determination of Claims and Questions) Regulations, 1948 [S.I. 1948 No. 1144], unless he can bring his case within the proviso to that regulation. That proviso, so far as is relevant to this appeal, provides that ". . . repayment shall not be required in any case where the person concerned is shown to the satisfaction of . . . the Commissioner . . . to have acted in good faith in all respects as to the obtaining and receipt of the benefit."

6. The first question, therefore, which falls to be decided is whether the claimant in this connection has to have imputed to him any lack of good faith in his son, who acted on his behalf in obtaining payment of the pension. In Decision C.W.G. 6/50 (reported) it has already been decided that "when an agent has been appointed by the Minister . . . to act on the claimant's behalf, that agent stands in the claimant's shoes for all purposes relating to the claiming and obtaining of benefit. Anything that the agent does in relation to those matters counts in law as if it were done by the claimant in person. It makes no difference that the claimant has no control over what the agent does: for indeed the agent can only be appointed if the claimant is unable to act for himself. . . ."

7. In the present case, however, the claimant's son was not appointed by the Minister to act on the claimant's behalf until a date later than that on which the periods to which this decision relates ended. On the other hand, the claimant, although not in full control of his mental faculties, appears to have realised that his son was acting for him in obtaining payment of his pension and to have wished him to do so. The son was, therefore, the claimant's agent in effect appointed by the claimant, although the form of appointment on the back of the pension order was not signed by the claimant personally owing to his state of health.

8. In those circumstances it seems to me that the claimant's son stands in the claimant's shoes for all purposes relating to the obtaining of benefit just as he would have done if he had been appointed by the Minister.

9. It, therefore, becomes necessary to consider whether in obtaining the benefit overpaid the claimant's son acted in good faith in all respects.

10. In order to obtain payment of that benefit, the claimant's son had to sign a declaration on each pension order form declaring on behalf of the claimant that he was entitled to the sum shown on the order under the conditions set out in the order book, which he had read and understood. The claimant's son has admitted that he had not read the conditions and there is no suggestion that the claimant had either read or understood them. At the beginning of an order book on a separate and brightly coloured page there is a warning of the need to read the conditions carefully. If the claimant's son had read the conditions, he would have seen under the heading "Inability to attend the Post Office," which was clearly the claimant's

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case, an instruction that, if the claimant was kept in a hospital, the local insurance office must be notified at once as his pension might become subject to reduction after a certain time. Further, the claimant's wife, who received a retirement pension and had been in hospital for some months before her death, had had her pension reduced and all correspondence relating to the surrender of her pension order book for the purpose of reducing the rate of pension payable to her was carried out on her behalf by the claimant's son. He had dealt on the 2nd April, 1954 on behalf of his mother with form B.R. 405 (Rev.), a form which refers to the fact that leaflet N.I. 9 is enclosed with it, explaining the position regarding the payment of pensions to persons who are in-patients of hospitals. I also note that on the 14th July, 1954 the claimant's son wrote apologising for his oversight in not forwarding his mother's pension order book for amendment as requested and added "I trust you will make the necessary arrangements to recover the overpayment as you think fit."

11. The claimant's son has stated that at the time of his father's illness he was himself ill and under great mental strain due to both his parents being ill, but in the light of the facts set out above I find it impossible to hold that I am satisfied that, in obtaining payment of his father's pension at the full rate without communicating to the local insurance office the fact that his father was in hospital, he acted in good faith in all respects.

12. Accordingly, the claimant has to be required to repay the sum of £21 17s. 0d. to the National Insurance Fund.

13. I must dismiss the claimant's appeal, made on his behalf by his son.
