

INVALIDITY BENEFIT

Late claim for increase for wife — Change from Sickness to Invalidity Benefit

The claimant was aware of the earnings limit for the payment of an increase of sickness benefit in respect of his wife, which had precluded payment in his case, but said he was unaware of the different conditions and earnings limit which applied to an increase of invalidity benefit until some 6 months after he had received that benefit. He claimed promptly once he knew he was entitled to an increase of invalidity benefit. The Department of Health and Social Security had sent him a form and leaflet about invalidity benefit shortly before he was due to receive it.

Held that :-

1. The claimant had good cause for his failure to claim an increase of invalidity benefit for his wife before the date of his claim (paragraph 1).
2. Having been informed that the limit to his wife's earnings was £3.70 per week, the claimant could not have been expected to enquire if the position was different in relation to invalidity benefit in the absence of anything that might have been expected to alert him to the possibility of change (paragraph 8).
3. Because of the state of the claimant's health when the form and leaflet about invalidity benefit were sent to him, he could not have been expected to attend to them at the time or to set them aside methodically for prompt attention when he was better. Documents of this kind may have an impact at the time of their receipt, but if the claimant is then unfit to deal with them he may be excused for failing to attend to them when at a later stage he is better and has a backlog of matters to attend to (paragraph 9).

In his decision the Commissioner commented on the inclusion in the case papers of a specimen form and leaflet which were not exact replicas of those sent to the claimant and drew attention to the need, where it was impracticable to do otherwise, for insurance officers to specifically refer to the fact in their submissions (paragraph 6).

1. My decision is that the claimant had good cause for his failure to claim an increase of invalidity pension for his wife for the period 25 January 1977 to 18 June 1977 before the date of his claim (20 July 1977) and that such increase is payable to him accordingly.

2. The claimant claimed and was paid sickness benefit on account of cerebral ischaemia and hypertension for a period of more than four months from 3 May 1976. In December 1976 he sustained a myocardial infarction on account of which he was in hospital from 6 December for about ten days, during which he was in the intensive care unit, and he remained incapable of work at least down to August 1978 when he still could not go out unaccompanied. From 25 January 1977 he became entitled to invalidity benefit in place of sickness benefit. He did not initially claim an increase of sickness benefit for his wife because she was earning more than the limit above which the increase could not be claimed for her, but subsequently he claimed the increase for a short period during which she had to give up work to nurse him. He did not immediately claim an increase of invalidity benefit for his wife because he was not aware that for that benefit the limit on his wife's earnings was dramatically higher. In July 1977 his wife was informed on a call that she made at her local office of the Department of Health and Social Security that her husband could have claimed the increase from the

previous January. He claimed promptly after that, but although the increase was paid with effect from a date approximately one month before the claim, the insurance officer decided that the claimant did not have good cause for late claim in relation to any earlier period and that the claimant was therefore disqualified for receiving the increase for any such period under regulation 13 of and Schedule 1 to the Social Security (Claims and Payments) Regulations 1975 [SI 1975 No 560]. An appeal to the local tribunal was unsuccessful and the claimant now appeals to the Commissioner.

3. The claimant has suggested that the rules about late claims are intended to be flexible and not strictly adhered to. In fact however there is no general discretion under which the rules may be waived. I can only allow the claim if I am satisfied that the claimant had good cause for his failure to claim earlier.

4. The local tribunal felt that the reason why the claimant did not claim earlier was ignorance of his rights and held that this cannot in law amount to continuous good cause. In so holding they went further than the local insurance officer's submission that a claimant is expected to take reasonable measures to acquaint himself with his rights and duties. It is a fallacy or at least a dangerous over-simplification to assume that ignorance of rights cannot amount to good cause for delay in claiming. In Decision R(S) 2/63 a decision of a Tribunal of Commissioners, it was stated at paragraph 13 that: "Ignorance of one's rights is not of itself [my underlining] good cause for delay in claiming," implying that it is one of a number of factors adding up to good cause. A claimant ought to take reasonable steps to ascertain his rights, but as the above Tribunal pointed out there are frequent occasions when it is reasonable to make no enquiries because there would not appear to an ordinary person to be anything to enquire about. A similar view has recently been expressed in the Court of Appeal in relation to complaints of unfair dismissal, which may be entertained even if presented out of time if in the circumstances it was "not practicable" for the complaint to be presented before the end of the prescribed time. In *Dedman v British Building & Engineering Appliances Ltd* [1974] 1WLR 171 Lord Denning MR after alluding to the fact that a stricter view had at that time been taken in Scotland than in England indicated a preference for the English approach and said summing up his views (at page 177): "If [the complainant] was not at fault, nor his advisers, — so that he had just cause or excuse for not presenting his complaint within the four weeks — then it was "not practicable" for him to present it within that time." In *Wall's Meat Co Ltd v Khan* [1979] I.C.R. 52 at page 56 Lord Denning MR referring to the *Dedman* case said: "Ignorance of his rights — or ignorance of the time limit — is not just cause or excuse, unless it appears that he or his advisers could not reasonably be expected to have been aware of them." If in this case the local tribunal had had this passage in front of them they might have stopped to ask themselves whether the claimant could or could not reasonably have been expected to have been aware of his rights or of any relevant time limits. I omit reference to a claimant's advisers as special considerations apply in the field of national insurance in cases where the making of a claim is delegated to another (see Decision CG 1/50 (KL)).

5. In the present case the claimant made a claim for an increase of sickness benefit for his wife for a short period in May 1976 during which she gave up working in order to nurse him. In response to that claim he received a duplicated form that he was invited to complete. This form stated that benefit (not specifically sickness benefit) was payable for her only if she had given up work altogether or for any week in which her earnings did not amount to more than £3.70. In completing the form the claimant stated that his wife returned to work on 18 May 1976 and that her earnings in the week before she stopped working were £33.40 gross. At this point the claimant would have the impression that he could not get an increase of any benefit for his wife if her earnings exceeded £3.70 per week.

6. Shortly before the claimant was due to become entitled to invalidity benefit in place of sickness benefit there were sent to him (according to the records of the Department of Health and Social Security on 30 December 1976) leaflets NI 16A and form BF 224. The former of these is a leaflet of some 10 pages (in the April 1975 edition, the latest edition in issue at December 1976) and it contains information about invalidity benefit including a statement about the earnings limit for a wife, showing that the increase would be lost altogether if the earnings exceeded £28.90 per week. This was no longer the relevant figure in December 1976 as the limit was significantly raised from April 1976 and the figure may possibly have been corrected in the copy sent to the claimant. Form BF224 is a brief form about invalidity benefit which contains a specific reference to the easier earnings limit for a wife. Unfortunately the case papers contain a copy of leaflet NI 16A of July 1977 and of BF 224 with a date of issue in February 1977, which cannot have been what was issued to the claimant in December 1976. I understand that there was an earlier edition of form BF 224 which gave effect to the increase in the earnings limit that came into force in April 1976. I propose to assume in favour of the insurance officer that the leaflet and form sent were in one way or another up to date. I realise that it is not always practicable to include in the case papers an exact replica of the form or leaflet sent to a claimant. But if for convenience a different leaflet or form is substituted, the fact that it is not necessarily in the exact terms of the form or leaflet sent should be specifically stated in the submission of the insurance officer. It should be stated further (if it is the case) that there is no material difference and any material difference should be pointed out. Unless this is done material differences may be overlooked and the determining authorities may be misled. I strongly disapprove of the course adopted in this case of including copies of a substituted form and leaflet without comment.

7. The claimant can argue that in January 1977 the Department were in full possession of all the relevant facts and might have been expected to have volunteered the information that he was entitled to an increase of invalidity benefit for his wife and not contented themselves with sending papers from which the information might have been gleaned. The Department can reply that it is quite impracticable to keep such a check on the position of all claimants owing to the vast number of claims that come before them, that they do their utmost to acquaint claimants with their rights by leaflets and public advertisements, but that further than that they cannot be expected to go. In this case they say that the

claimant was apprised of his rights when he was sent leaflet NI 16A and form BF 224, and that even if at the time he was too ill to assimilate them he had plenty of time to do so before July 1977.

8. I accept that, having regard to the number of claims, it is impracticable to keep track of the individual position of a claimant even when all the facts about him are in the possession of the Department; but it is possible to find that a person has good cause for late claim without the Department being at fault. Just as the claimant cannot expect the Department to make it their top priority to keep all the facts of his particular case constantly in mind, so the Department cannot expect the claimant to make it his top priority to acquaint himself with the complexities of the national insurance law on all matters on the chance that they may affect him. The claimant in this case, having been informed that the limit to his wife's earnings was £3.70 per week, could not have been expected to enquire if the position was different in relation to invalidity benefit in the absence of anything that might have been expected to alert him to the possibility of change. For myself I should doubt whether, even if he had been fit at the time, the sending to him of a long general leaflet like NI 16A from which the necessary information could be obtained without anything directing attention to the point should be expected to dispel the impression previously created. Indeed I find it slightly incongruous that the laudable attempts of the Department to keep claimants well informed about their rights in general should be invoked in particular cases to justify disqualifying claimants for receiving benefit. Even so I think that form BF 224 is sufficiently short and specific to alert a fit person to the position, so that, if it was sent by itself and not with other literature that reduces its impact, it could well be as effective as a personal letter.

9. I need not go into this further in the present case because the claimant was plainly not a fit man at the time that the documents were sent. He had very recently left hospital where he had been in intensive care on account of a myocardial infarction and he could not have been expected either to attend to the documents at the time or to set them aside methodically for prompt attention when he was better. Documents of this kind sent out to claimants may have an impact at the time of their receipt, but if the claimant is then unfit to deal with them he may be excused for failing to attend to them when at a later stage he is better and has a backlog of matters to attend to. In my judgment therefore the claimant had good cause for his failure to claim an increase of invalidity benefit for his wife, which continued down to the date of his claim in July 1977 and I allow his appeal.

(Signed) J G Monroe
Commissioner