



TC06190

Appeal number: TC/2015/05730

National Insurance Contributions – Whether married woman’s election not to pay NICs made – Whether 1978-79 qualifying year for State Pension purposes – Whether additional NICs paid in 1991-92 – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

HALINA KANTOROWSKI

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE & CUSTOMS**

Respondents

TRIBUNAL: JUDGE JOHN BROOKS

Sitting in chambers at Taylor House, 88 Rosebery Avenue, London, EC1 on 25 October 2017

As both parties consented and the Tribunal considered that it was able to determine the matter without a hearing, this appeal was determined on the papers without a hearing pursuant to Rule 29 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009

DECISION

1. Mrs Halina Kantorowski appeals against a decision made by an officer of HM Revenue and Customs (“HMRC”), under s 8 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 on 1 June 2015 as varied on 29 July 2015 following a review, that she “was not liable to pay National Insurance Contributions (“NICs”) as a married woman in the period from 22 November 1965 to 5 April 1975” and that she had paid the NICs shown in the table below:

Contribution Year		Contributions Paid
1957 – 1975		Nil
Tax Year(s)	Class 1 NICs Paid £	Class 3 NICs Paid £
1975-76	Nil	Nil
1976-77	Nil	Nil
1977-78	Nil	Nil
1978-79	53.43	Nil
1979-80	124.54	Nil
1980-81	146.57	Nil
1981-82	191.52	Nil
1982-83	187.82	Nil
1983-84	20.81	Nil
1984-85	Nil	27
1985-86	Nil	52
1986-87	Nil	23
1988-89	Nil	14
1989-90	Nil	25
1990-91	Nil	8
1991-92	Nil	Nil

2. The effect of this decision is that Mrs Kantorowski does not receive the State Pension to which she believes she is entitled.

3. Until 6 April 1975 a married woman could, under Regulation 2 of the National Insurance (Married Women) Regulations 1948, elect not to pay NICs and, while she remained married (even if separated from her husband), the election continued to have effect unless it was expressly revoked.

4. To make an election a married woman had to complete a form CF9 which was attached to Leaflet NI1. This explained the effect of an election including how it could affect benefits such as the State Retirement Pension. To complete a CF9 a married woman was required to sign a declaration that she either did or did not wish to pay NICs. This would then be sent to a local office of the department then responsible for the collection of NICs. Originally this was the Ministry of Pensions and National Insurance and from 1968 it was the Department of Health Social Security.

5. In her correspondence with HMRC and the Tribunal Mrs Kantorowski explains that in September 1965, having separated from her husband (from whom she was divorced in 1983), she came to the United Kingdom from Poland at the invitation of her aunt. She found employment at the Lyons Food Factory (where her aunt also worked) shortly after her arrival in the United Kingdom and continued to be employed by Lyons until March 1966, when she returned to Poland. Although Mrs Kantorowski remembers signing an employment contract and “some health check papers” she has no recollection of ever having signed a CF9 stating she did not wish to pay NICs when she started work. She says that she would never knowingly have made such an election as she had always intended to build her own pension.

6. Following her return to the United Kingdom in May 1970, Mrs Kantorowski explains that she was employed full time at the Shelbourne Hotel for 18 months between 1971 and 1972 and again, for two years and 7 months, from 1978 until 1981. She was subsequently employed four to five weeks in 1981 by De Vere Park Hotel, 11 months in 1983 by Grand Metropolitan Catering, six weeks in 1984 by Asda; and five weeks from December 1989 to January 1990 by Browns Hotel. She recalls that throughout each and every one of her employments and also during the periods in which she was unemployed, she either paid or was credited (by reason of her unemployment) with NICs.

7. In a letter, dated 23 September 1991, containing the Retirement Pension Forecast that she requested, the Benefits Agency informed Mrs Kantorowski that she did not have enough NICs in the tax years 1985-86, 1987-88, 1988-89, 1989-90 and 1990-91 to count towards her Basic Pension. However, as the letter advised, Mrs Kantorowski remedied that shortfall by making a payment of Class 3 NICs of £588.80.

8. The Contributions Agency (as it had by then become known) wrote to Mrs Kantorowski on 17 November 1993 in relation to her 1991-92 NICs advising that she had 29 NICs credits for unemployment and stating:

“... If the record is correct and you were not self-employed, it means that the 1991-92 year cannot count towards your retirement pension unless you pay 23 voluntary contributions ...

If you want to pay and do so by 5 April 1994 the amount we need is £116.15.”

In her copy of this letter Mrs Kantorowski has circled the amount and written “PAID”. However, she has provided no additional evidence to corroborate that such payment has been made.

9. HMRC’s case is that Mrs Kantorowski, having arrived in the United Kingdom from Poland and started working at Lyons, signed a form CF9 (which has now been destroyed under departmental policy) electing not to pay NICs from 22 November 1965 (to 1975). They also contend that the £53.43 in NICs paid during 1978-79 were insufficient to qualify for State Pension purposes, and that although Mrs Kantorowski was credited with 29 NICs during 1991-92 there is no record to indicate that she paid an additional £116.14.

10. HMRC say that if Class 1 NICs had been received from Mrs Kantorowski's employer during any period before April 1975 as no NICs were due (because, they contend, she had signed a form CF9) the Local Office responsible for collection of NICs would not have accepted the payments and would have made enquires as to why Class 1 NIC stamps were affixed to her contribution card when her record showed that she had elected not to pay them. There is nothing on Mrs Kantorowski's record to indicate that such enquires were required or undertaken. Indeed, the copy of her "clerical NIC record" from 22 November 1965 to 6 April 1975 provided by HMRC records in the "notes" column "MW1/NP". This translates to "Married Woman Class 1 non-paying".

11. Mrs Kantorowski complains that although she has provided such documents as she is able, HMRC have failed to provide original data in support of their case and to enable her to contest what she describes as "their errors" in making the decision. For example, in a document attached to her Notice of Appeal setting out the "correct history" of her NICs she states (with emphasis as stated in Mrs Kantorowski's document):

"HMRC did not produce one single piece of GENUINE evidence in support of their showings in forms of figures, dates, claims etc."

12. This is in contrast to Mrs Kantorowski's own position, as stated in the same document to which she attached:

"... all relevant documents I have managed to salvage from flood – many perished and are not available. Such life situations (and there are plenty of other accidents and events like fire, war etc. causing records to be lost) are legitimate and important records MUST be preserved and kept in archives for to be used in EMERGENCY or as replacement for lost one. Claiming (as HMRC does) papers not being kept any longer is, frankly, out of order ..."

13. Although I sympathise with Mrs Kantorowski, who accepts that she does not have the documentary evidence to establish that the NIC payments were made, I am afraid that in an appeal such as this, against a decision made under s 8 Social Security Contributions (Transfer of Functions) Act 1992, Regulation 10 of the Social Security Contributions (Decisions and Appeals) Regulations 1999 provides:

If on an appeal ... it appears to the Tribunal that the decision should be varied in a particular manner, the decision shall be varied in that manner, but otherwise shall stand good.

The long established effect of a provision that a decision shall "stand good", is that it is for the appellant, in this case Mrs Kantorowski, to satisfy the Tribunal upon sufficient evidence that the decision appealed against was erroneous. The respondents (ie HMRC) are not required to establish that their decision is correct (eg see *T Haythornwaite & Sons v Kelly (HM Inspector of Taxes)* (1927) 11 TC 657).

14. Unfortunately for her, Mrs Kantorowski has not been able to produce any documents or material from which I could determine that she paid Class 1 NICs between 1965 and 1975. In addition, given the lack of any evidence of an enquiry into

such payments having been made by the Local Office dealing with such matters at that time, I find that it was more likely than not that Mrs Kantorowski did sign a CF9 as a married woman electing not to pay NICs. Similarly, given the lack of any corroborating documentary evidence, I am unable to find that Mrs Kantorowski made sufficient Class 1 NICs during 1978-79 to qualify for State Pension purposes or that she paid an additional £116.14 in Class 3 NICs for 1991-92.

15. Although in her Notice of Appeal Mrs Kantorowski also refers to not having been credited with NICs for 1996-97, that year was not included in the decision by HMRC against which she has appealed (see above). As a result, I am unable to consider Mrs Kantorowski's position regarding her 1996-97 NICs as part of this appeal.

16. In the circumstances, the only choice open to me is to dismiss the appeal and uphold the decision.

17. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**JOHN BROOKS
TRIBUNAL JUDGE**

RELEASE DATE: 30 October 2017