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JNBP/OG

SOCIAL SECURITY ACTS 1975 TO 1979
CLAIM FOR NON-CONTRIBUTORY INVALIDITY BENEFIT
DECISION OF THE NATIONAL INSURANCE COMMISSIONER

1. My decision is that:
 - (a) non-contributory invalidity pension is payable from 11 November 1977 to 12 September 1978 (both dates included) and
 - (b) non-contributory invalidity pension is not payable from 13 September 1978 onwards.

2. This is an appeal by the claimant from the majority decision of a local tribunal dated 30 August 1978 disallowing the claimant's appeal from the decision of the local insurance officer dated 26 May 1978 disallowing the claim for non-contributory invalidity pension from 17 November 1977 because the claimant had not proved that she was incapable of performing normal household duties by reason of some specific disease or bodily or mental disablement.

3. The effect of the relevant statutory provisions and regulations as in force at the date of the local tribunal's decision is fully and correctly explained in the local insurance officer's submission to the local tribunal and it is unnecessary for me to repeat that explanation. I shall later deal with the effect of an amending regulation which came into force on 13 September 1978 and bears upon the claimant's claim from then onwards.

4. It was submitted to the local tribunal by the local insurance officer that the claim could not succeed unless the claimant established that the amount she could perform by way of normal household duties was less than substantial. The majority of the local tribunal evidently accepted that interpretation of regulation 13A(2) of the Social Security (Non-Contributory Invalidity Pension) Regulations 1975 (as amended by the Social Security (Non-Contributory Invalidity Pension) Amendment Regulations 1978) and decided that the amount that the claimant could perform as aforesaid was substantial.

5. Since the local tribunal hearing Decision R(S) 7/78 has been given by a Tribunal of Commissioners. In that decision it was held that under regulation 13A above-mentioned, as in force up to 12 September 1978, incapacity for normal household duties had to be judged by reference to what a woman was unable to do and whether that was substantial and that it was not material to consider what she was able to do and whether that was substantial. It was also held that a woman was incapable of performing normal household duties within the meaning of section 36(2) of the Social Security Act 1975 operating unaided by regulations, if she was effectively prevented from running her household in the manner to be expected of a housewife in her circumstances and maintaining it to the standard appropriate to such circumstances.

6. The insurance officer now concerned submits that, applying Decision R(S) 7/78 to the facts of the present case in respect of the period 17 November 1977 to 12 September 1978, the claimant should not succeed under section 36(2) unaided by regulations. However, he submits that it is for consideration whether she has shown that what she is unable to do is substantial and is therefore assisted by regulations 13A(2).

7. I have considered the evidence relevant to the question of the extent to which the claimant is unable to perform normal household duties and I have reached the conclusion that the amount that she is unable to do is substantial having regard to the meaning given to that word by the Chief Commissioner in Decision R(S) 5/78 and that she is therefore assisted by regulation 13A(2). The insurance officer does not dispute that the claimant was incapable of paid work throughout the period 17 November 1977 to 12 September 1978 (both dates included) and throughout the period of 196 days preceding 17 November 1977 and it follows that her claim must succeed in respect of the former period. In the circumstances it is unnecessary for me to consider whether she satisfied the condition of section 36(2) unaided by regulations.

8. I turn now to the period from 13 September 1978 onwards. On that date regulation 13A(2) came into force in the following substituted form:-

"(2) A woman shall be treated as incapable of performing normal household duties if, without substantial assistance from or supervision by another person, she cannot or cannot reasonably be expected to perform such duties to any substantial extent, but she shall not be treated as so incapable if, without such assistance or supervision she can or can reasonably be expected to perform such duties to any substantial extent."

In Decision R(S) 6/79 the Chief Commissioner, dealing with the substituted regulation 13A(2), said the following in paragraphs 9 and 10:-

"9. The effect of the substituted regulation in operation after 13 September 1978 is to provide a set of circumstances in

which a woman shall be treated as incapable of performing normal household duties and another set of circumstances in which she shall not be so treated, and to this extent in my opinion it excludes any independent operation of section 36(2) of the Act.

10. The normal household duties must be considered to ascertain those which she can perform. These duties, whether or not perfectly performed, become the test of her capacity to perform normal household duties "to any substantial extent". The questions arising are:-

- (i) Can the claimant without substantial assistance or supervision from another person perform normal household duties to any substantial extent? or
- (ii) Can she without such assistance or supervision be reasonably expected to perform normal household duties to any substantial extent?

As to question (i). A negative answer to this question results in her being treated as incapable of normal household duties. A positive answer raises question (ii). If the answer to this question is positive, the claim will be defeated; if negative the claim will succeed.

9. Later in the same decision, allowing the claim, the Chief Commissioner said, in paragraphs 11 and 12:-

"11. Where normal household duties are concerned it seems to me that a housewife's prime requirement is mobility, and an impaired mobility greatly reduces the tasks which a housewife normally performs; it strikes at the roots of efficiency and capacity for normal household duties, the main feature of which is, I think, a capacity for sustained exertion, and that, in the claimant's case, is substantially impaired.

12. No doubt the claimant's part-time employment for domestic duties as a home help was carried on additionally to her own household commitments. I do not find any reason to reject her evidence that if she now attempts to do her own household duties she becomes ill from her complaint and has to take to her bed. She is incapable of work as a home help, and my conclusion is that as regards her own normal household duties she cannot perform such duties to any substantial extent without substantial assistance."

10. In the present case I am satisfied that there is impairment of mobility and substantial impairment of capacity for sustained exertion. However, I agree with the insurance officer's submission that such impairment is not alone conclusive and when Decision R(S) 6/79 is considered in the light of two later decisions of the Chief Commissioner

from which I shall quote I think that it is quite clear that, although in R(S) 6/79 he had emphasized the significance of such impairment, he did not regard it as conclusive.

11. In the case the subject of Decision R(S) 7/79 the medical evidence graded the claimant's function for sustained exertion as substantially impaired but graded the other functions required for household duties as being no more than slightly impaired. In paragraph 7 the Chief Commissioner said:-

"7. The claimant has since supplemented her evidence with a list of the housework which she can and cannot do, and the housework she can do, as described by her, is limited shopping locally for light articles, standing for a limited time at the sink or in the kitchen to peel vegetables, open tins or make tea, and put washing in the automatic washing machine"

and in paragraph 11 he said:-

"11. I appreciate that the claimant's case was that the medical evidence was unsatisfactory, but it is to be noted that the doctor twice stated that the claimant can do most of the things ("a lot of things") which do not require a considerable amount of exertion. Apart from the household duties to which I have referred in paragraph 7 above, I consider that I am not precluded from giving consideration to other household duties which, as a matter of common knowledge, normally arise in any household, and do not call for sustained and considerable exertion. Thus, although not specifically referred to in the evidence, I think it reasonable to find that the claimant can lay the table for breakfasts, lunch tea or an evening meal, can prepare for such meals, and wash up thereafter. She is, I would judge, capable of some dusting, cleaning, sewing, mending and also washing individual articles of clothing as required, and is capable of exercising an overall supervision and direction of the assistance she receives. Whilst she cannot herself do weekly shopping from a supermarket by carrying the shopping, she goes shopping with her husband by car, and has no impairment in dealing with tradesmen. I think it reasonable to find, as I do, that she can plan for her household requirements in the way of food to be purchased, and for the purchase of articles of domestic use. All the above activities in my view are household duties which the claimant can perform without assistance, and are household duties to a substantial extent which she can reasonably be expected to perform."

12. In the decision on Commissioner's file C.S. 136/1978 the Chief Commissioner, deciding that the claimant had not proved her incapacity

for household duties from 13 September 1978 said, in paragraph 6:-

"6. The claimant's appeal to the local tribunal stated that she is able to do washing up and manages to prepare the main meal. She can do light dusting and iron a few clothes each day. I appreciate that she has no capacity for sustained exertion such as doing a family wash, or using a vacuum cleaner entails, but there are household duties of substantial amount which do not demand great exertion. The claimant in her observations of 1 July 1979 does not state that she is unable to lay the table for meals, sew, mend, wash individual items of clothing and exercise an overall supervision and direction of such assistance as she receives. These tasks were referred to by the insurance officer in the submission of 22 June 1979. Additionally, although the claimant does not herself go shopping, I have no reason to suppose that she could not make out shopping lists of those commodities which her household requires from time to time. In my opinion, in the claimant's circumstances, the above household duties which the claimant can do without substantial assistance and can reasonably be expected to do constitute a substantial part of her normal household duties."

13. In her claim form dated 21 April 1978 the present claimant stated that normally she was able to plan, prepare and cook a main meal for herself and her family and to keep her home clean and tidy from week to week without much difficulty but that normally it was only with substantial difficulty that she was able to plan, select at the shops and collect her weekly shopping and do the normal weekly washing and ironing for herself and her family. From her comments on the claim form and in subsequent statements it appears that she is able to go shopping in her car and that her main difficulty is in carrying what she has bought except a few items at a time. I have no reason to doubt that she is well able to plan her shopping. It also appears that she is able to use her automatic washing machine, but cannot hang out anything except small items and finds ironing very difficult. Again I have no reason to doubt that the claimant is able to lay the table for meals, sew, mend and exercise a general supervision and direction over the assistance she receives. Considering the matter in the light of the Chief Commissioner's observations quoted above, it seems to me that even when account is taken of the demands made upon her time and energy by her children and of the pain which she suffers frequently, even if she avoids the tasks she has been told to avoid, she is able without assistance to perform, and can reasonably be expected to perform, household duties to a substantial extent. In reaching that conclusion I have not been unmindful of the many household duties which the claimant cannot perform but as I have explained above the relevant question is whether what she can do is substantial.

14. For the foregoing reasons the appeal is allowed only to the extent indicated in my decision as set forth in paragraph 1 above.

(Signed) J N B Penny
Commissioner

Date: 19 May 1980

Commissioner's File: C.S. 66/1979
C I O File: I.O. 2805/NV/78
Region: HNCIP Unit, NFCO