

RJAT/JP

SOCIAL SECURITY ACTS 1975 TO 1979

CLAIM FOR NON-CONTRIBUTORY INVALIDITY BENEFIT

DECISION OF THE NATIONAL INSURANCE COMMISSIONER

ORAL HEARING

Decision C.S. 3/79

1. This appeal arises out of an application by the claimant, who is a housewife, for non-contributory invalidity pension. A local tribunal on 22 November 1978 decided that her claim succeeded to 12 September 1978, but not thereafter, and it is from the disallowance from 13 September 1978 that the appeal is now brought. I heard the appeal on 10 April 1979. The claimant did not attend; the insurance officer was represented by Mr J P Canlin of the Solicitor's Office, Department of Health and Social Security.

2. Section 36 of the Social Security Act 1975 ("the Act") provides:-

"(1) Subject to the provisions of this section, a person shall be entitled to a non-contributory invalidity pension for any day on which he is incapable of work, if he has been so incapable for a period of not less than 196 consecutive days ending immediately before that day.

(2) A person shall not be entitled to such a pension if he is under the age of 16 or receiving full-time education; and a woman shall not be so entitled if:-

(a) she is married and either -

(i) she is residing with her husband, or

(ii) ... or

(b) ...

except where she is incapable of performing normal household duties".

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3. Section 36(7) of the Act provides for the making of regulations to prescribe the circumstances in which a person is or is not to be treated for the purposes of that section as incapable of work, as incapable of performing normal household duties or as receiving full-time education.

4. Through the operation of a commencement order the benefit first became payable to a married woman living with her husband on 17 November 1977, and by force of regulation 2 of the Social Security (Non-Contributory Invalidity Pension) Amendment Regulations 1977 [S.I. 1977 No. 1312] made on 29 July 1977, regulations 13 and 13A were inserted into and became part of the current Regulations [S.I. 1975 No. 1058]

5. Regulation 13A provided as follows:-

"Circumstances in which a woman is or is not to be treated as incapable of performing normal household duties.

13A.-(1) A woman shall not be treated as incapable of performing normal household duties unless she is so incapable by reason of some specific disease or bodily or mental disablement.

(2) Where as a result of such a disease or disablement a woman -

(a) is unable to perform to any substantial extent, or cannot reasonably be expected to perform to any substantial extent, normal household duties; or

(b) in the absence of substantial assistance from or supervision by another person, is unable to perform to any substantial extent, or cannot reasonably be expected to perform to any substantial extent, such duties,

she may be treated as incapable of performing such duties.

(3)

(a)

(b)

6. The claimant was advised by the doctor who examined her on 16 November 1977 and on 20 July 1978 that she should refrain from paid work, and it has been accepted by the insurance officer and by the local tribunal that she is incapable of work within the meaning of the statutory provision.

7. On 8 September 1978 a Tribunal of Commissioners held in Decision C.S. 5/78, to be reported as R(S) 7/78, that regulation 13A(2)(a) above was concerned with what, because of disablement, a claimant was unable to do, and that once it was found that that was substantial a claimant was within the regulation, and it was no longer material to consider what she was able to do, or whether that also was substantial. They also held that incapacity for normal household duties within section 36(2) operating independently would be established on proof that by reason of disablement the claimant 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.

8. With effect from 13 September 1978 the Social Security (Non-Contributory Invalidity Pension) Amendment Regulations 1978 [S.I. 1978 No. 1340] substituted for paragraph (2) of regulation 13A a paragraph reading as follows:-

"(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 of supervision, she can or can reasonably be expected to perform such duties to any substantial extent."

9. The effect of the substituted regulation in operation after 13 September 1978 is to provide for 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.

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11. It remains to apply the facts of the case to the questions raised. The claimant, who is about 48 years of age lives in a whole house with her husband and son. She suffers from thrombosis, cellulitis and has badly swollen legs, described as very heavy. Her lymphoedema causes recurrent severe cellulitis, which requires her to keep off her feet as much as possible. She is not normally able to do washing, shopping, ironing or cleaning, and these household tasks are done by the married daughter. Her doctor has assessed her function for standing, (including balance), kneeling and sustained exertion as being substantially impaired, with no impairment in lifting and carrying, reaching and bending, climbing stairs, manipulative ability, planning and communication. As to these functions the claimant does not agree that she can reach out and climb stairs, and points out that she can only move about slowly. She concedes that she has the capacity to do household tasks, such as using a Hoover, but in her grounds of appeal points out that she does not do so because the slightest such exertion can put her in bed, ill with cellulitis, which means that her husband has to stop work to look after her. Her employment, which she gave up on her doctor's advice, was that of a home help, working part-time 2 to 3 hours a day, doing some shopping and housework, an activity which brought on attacks of cellulitis 3 times in six weeks. She has accepted her doctor's advice to rest her legs as much as possible, and the lack of exercise has contributed to her overweight. 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.

13. My decision is that the claim for non-contributory invalidity pension in respect of the period from and including 13 September 1978 is established, and the appeal is allowed.

(Signed) R J A Temple
Chief Commissioner

Date: 14 May 1979

Commissioner's File: C.S. 99/1979

C I O File: I.O. 1053/NV/79

Region: HNCIP Unit NFCO