

SOCIAL SECURITY ACTS 1975 TO 1984
CLAIM FOR NON-CONTRIBUTORY INVALIDITY BENEFIT
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Sally Delphine Holman (Mrs)

Appeal Tribunal: Watford

Case No: 5/2

[ORAL HEARING]

1. This appeal succeeds. My decision is that
 - (1) non-contributory invalidity pension is payable to the claimant from 13 June 1983 to 28 November 1984 (both dates included) and
 - (2) severe disablement allowance is payable to the claimant from 29 November 1984 to 27 November 1985 (both dates included).
2. I held an oral hearing of this appeal. Mr R. Drabble of counsel, instructed by the Child Poverty Action Group appeared for the claimant. The adjudication officer was represented by Mr P Milledge of the Solicitor's Office, Department of Health and Social Security.
3. The claimant, a married woman then aged 38, who has at all material times been living with her husband and 2 sons, on 19 June 1983 completed claim form BF450 to claim non-contributory invalidity pension from 31 August 1982. The claim was accepted as being made on 20 June 1983 (the correct date is 19 June 1983). The insurance officer disqualified the claimant from 31 August 1982 to 11 June 1983 because the claim was not made within the required time limit and the insurance officer did not accept that the claimant had shown continuous good cause for the delay in making the claim. The claimant did not wish to appeal against this disqualification. Her appeal is against the disallowance from 13 June 1983 which was made on 27 September 1983 on the ground that she had not proved that she was incapable of performing normal household duties by reason of some specific disease or bodily or mental disablement. It has never been, and is not now, in dispute that the claimant has been continuously incapable of work for a period commencing at least 196 days prior to 13 June 1983.
4. The claimant's appeal to the local tribunal, before whom she did not appear, was disallowed by that tribunal on 16 February 1984 on the ground that she had not proved that she was incapable of performing normal household duties. She now appeals to the Commissioner.

5. It is unnecessary to set out here the relevant statutory provisions relating to non-contributory invalidity benefit, in cases like the present, of a married woman living with her husband. The relevant law is set out and explained in the decision of the Court of Appeal in the case of Marilyn Stevens v D.M. Johnson which was given on 23 November 1984 and a copy of which is in the case papers.

6. The claimant and her husband both appeared before me and gave evidence and were cross examined. In the light of their evidence, and the evidence in the case papers, Mr Milledge, on behalf of the adjudication officer, conceded that the claimant has been incapable of normal household duties since 1 December 1982 (196 days before 13 June 1983) down to and including 28 November 1984. I am satisfied, after considering the oral evidence of the claimant and her husband, which I entirely accept, in conjunction with that already produced and set out in the case papers, that there has since 1 December 1982 been no day when the claimant has been able to perform normal household duties to a substantial extent and that she satisfies the tests imposed by the Act and regulations as explained by the Court of Appeal in the above mentioned decision. The claimant, in brief, suffers from back pain which becomes severe down her right side and her right leg if she attempts to use her right arm (and she is a pronounced right-hander) or to bend in any way. She can only tolerate appropriate painkillers three times a day and they only last for an hour or so if she does not attempt to use that arm or to bend. Their effect is drastically shortened if she does. Her degree of function was graded on form HA45 (completed by the doctor on 7 September 1983) as "slight" in 10 of the fifteen listed activities, none in two of them (kneeling and bending) and normal in only three of them. The doctor added that the claimant suffered constant low back pain which was aggravated when standing, lifting etc. I accept that the doctor's estimate of the claimant's functions. In my judgment, applying the tests explained by the Court of Appeal, it is perfectly clear that the claimant is incapable of normal household duties in terms of the Act and regulations and that Mr Milledge's concession was entirely properly made and can and should be accepted. My award of non-contributory invalidity pension is set out in paragraph 1(1) above.

7. (1) The position under the transitional provisions relating to severe disablement allowance in a case like the present, where a claimant was entitled to a non-contributory invalidity pension immediately before 10 September 1984 and 29 November 1984, is explained in Commissioner's starred decision CS/391/1983 and it is unnecessary to set it out again here save to point out (a) that the claimant is deemed to have claimed severe disablement allowance by virtue of regulation 20(2)(b) of the Social Security (Severe Disablement Allowance) Regulations 1984 (hereafter referred to as the SDA Regulations) and (b) that she is entitled to SDA by virtue of regulation 20(1) of those regulations whether or not the appointed day in respect of her is 29 November 1984 in terms of regulation 20(1)(b), it not being in dispute that she has been continuously incapable of work since 1 December 1982.: see in particular, paragraphs 8 to 11 of that decision.

(2) It should be added that if the claimant had been held by me not to have been entitled to non-contributory invalidity pension for the period referred to in paragraph 1(1) an EEC non-discrimination question would have arisen: see my direction in the case papers dated 9 October 1985 and Commissioner's decision CS/212/1984. In order to have jurisdiction to consider this question, it would have been necessary to have the Secretary of State's

acceptance of the claim for HNCIP as a claim for SDA from 29 November 1984 under regulation 9(6) of the Social Security (Claims and Payments) Regulations 1979 as introduced by regulation 17 of the 1984 SDA Regulations, for regulation 20(2)(b) would have been inapplicable.

8. The claimant has, Mr Milledge told me, and I accept, already been awarded severe disablement allowance from 28 November 1985. Accordingly my award of this allowance should terminate on 27 November 1985. My decision on this point is set out in paragraph 1(2) above.

(Signed): V G H Hallett
Commissioner

Date: 23 January 1986