

COMMISSIONER'S DECISION
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SOCIAL SECURITY ACTS 1975 TO 1984

CLAIM FOR NON-CONTRIBUTORY INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER



[ORAL HEARING]

Decision

1. My final decision is that
 - (1) non-contributory invalidity pension is payable to the claimant from 1 January 1983 to 28 November 1984 (both dates included)
 - (2) severe disablement allowance is payable to the claimant for all days in the period from 29 November 1984 to the date of this decision and for twenty six weeks thereafter [Social Security (Claims and Payments) Regulations 1979 regulation 11(1) as amended]
 - (3) the claimant is entitled to severe disablement allowance for all subsequent days falling within the same single period of interruption of employment as the period referred to in (2) so long as she continues to satisfy the requirements for entitlement to such an allowance other than those referred to in paragraphs (a) and (b) of regulation 20(1) of the Social Security (Severe Disablement Allowance) Regulations 1984 [SI 1984 No 1303] ("the 1984 SDA Regulations").

Representation

2. I held an oral hearing in relation to the matters to which this final decision relates. The claimant was represented by Ms P Wood, Solicitor, of the Stockwell and Clapham Law Centre. The adjudication officer was represented. I am indebted to both representatives for their submissions.

History of the appeal

3. I gave an interim decision in this appeal on 22 May 1984, when I decided that the claimant was not entitled to non-contributory invalidity pension from 18 December 1981 to 31 December 1982 on the ground that in respect of that period she had not proved that she was incapable of performing normal household duties within the meaning of section 36(2) and (7) of the Social Security Act 1985, and the relevant regulations, down to and including 18 June 1982. The disallowance was continued down to 31 December 1982 because no award could be made for 196 days after the last day on which a claimant has been shown to have been capable of normal household duties. There was some medical evidence that the claimant's condition had deteriorated since 18 June 1982 but it was insufficient to found an award. Since I was bound by decision R(S) 1/83 (paragraph 10), which is that of a Tribunal of Commissioners, to dispose of the entire claim down to the date of my final decision, I gave an interim decision in order that further medical evidence could be lodged, if available.

4. Further medical evidence has now been produced. It consists of instructions to Dr Ross-Russell and his detailed report dated 25 July 1984, a further report by him dated 23 July 1985 and a further report by Dr Burton, the claimant's general practitioner, which is dated 29 July 1985. Dr Ross-Russell is the Consultant Physician in charge of the claimant's treatment in the Department of Neurology at St Thomas's Hospital, one of the principal London teaching hospitals. It was his original opinion which weighed heavily with me in deciding, in my interim decision, that the claimant had not proved that she was incapable of normal household duties for the period covered by that decision. In his later report of 25 July 1984, Dr Ross-Russell concluded by stating that at that time her combined disabilities, particularly her frequent epilepsy and the period of fatigue and depression which followed each attack, made her incapable of performing normal household duties without substantial assistance. He added that this state need not continue indefinitely and he hoped that with suitable treatment the frequency of the attacks would be reduced again. In his last report, which is that of 23 July 1985, he stated that there had been no real improvement in her state of incapacity in the past year (apart from an episode of pain in the left shoulder which had responded to local treatment in the Department of Rheumatology) and in view of the lack of improvement her state might continue indefinitely. Her present level of disability seemed to date from June 1982. Dr Burton's evidence is to the same effect except as to the response of the arm to treatment.

The issues in dispute

5. In the light of this additional evidence, Mr Chivers, on behalf of the adjudication officer, conceded that the claimant has been incapable of normal household duties since 18 June 1982 and is entitled to an award of non-contributory invalidity benefit from 1 January 1983 (196 days later). This concession is entirely properly made. I am satisfied, after considering the whole of the new evidence, in conjunction with that already produced and referred to in my interim decision, that from June 1982 the claimant's condition has been worse than that considered in my interim decision relating to the earlier period, that there has since then 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 and as explained by the Court of Appeal in Stevens v Johnson a transcript of whose judgment dated 23 November 1984 is included in the case papers. My final award of non-contributory invalidity pension is set out in paragraph 1(1) above and covers the period from 1 January 1983 to 28 November 1984, the last day for which, as explained in paragraph 8 below, this claimant can receive that benefit.

6. The remaining issue is whether (1) I can and should award severe disablement allowance to the claimant from 29 November 1984 and (2) if so, when my award should terminate.

The relevant law

7. Non-contributory invalidity benefit has been replaced by a benefit called severe disablement allowance from the coming into force of section 11 of the Health and Social Security Act 1984. That section substitutes a new section 36 of the Social Security Act 1975 for the existing or old section. The new section relates to severe disablement allowance. The old section relates to non-contributory invalidity benefit.

8. Section 11 and Schedule 4 of the 1984 Act were brought into force by paragraph 3 of the Health and Social Security Act 1984 (Commencement No 1) Order 1984 [SI 1984 No 1302] (as amended). For the purpose of transitional provisions the appointed day is 29 November 1984: see sub-paragraph (3) of paragraph 3.

9. Regulation 20(1) and (2) of the 1984 SDA Regulations provide:

- "20-(1) Any person who, immediately before both 10th September 1984 and 29th November 1984 was entitled to a non-contributory invalidity pension shall be entitled for 29th November 1984, and for any subsequent days which together with 29th November 1984 fall within a single period of interruption of employment, to a severe disablement allowance whether or not -
- (a) he is disabled for the purposes of section 36 of the Act, or
 - (b) 29th November 1984 is appointed for the purposes of section 11 of the 1984 Act in relation to persons of his age, if he satisfies the other requirements for entitlement to such an allowance."
- (2) If in the case of any person a day and an earlier day for which he was entitled to a non-contributory invalidity pension fall within a single period of interruption of employment -
- (a) for the purposes of section 36 of the Act he shall be deemed to be disabled on the day first-mentioned whether or not he is suffering from such loss of faculty as is specified in subsection (5) of that section; and
 - (b) the condition in section 79(1) of the Act (benefit must be duly claimed) shall be deemed to be satisfied for the purposes of his right to a severe disablement allowance for the day first-mentioned if, but for the passing of the 1984 Act, that condition would have been satisfied for the purposes of his right to a non-contributory invalidity pension for that day.

The arguments on jurisdiction to make an award

10. Ms Wood argued that severe disablement allowance should be awarded to the claimant from 29 November 1984 until she attains age 65. She relied on paragraph 4A of Schedule 8 to the Social Security Act 1975, which was inserted in that Schedule by paragraph 10(b) of Schedule 4 to the Health and Social Security Act 1984. Schedule 8 relates to the Assessment of Extent of Disablement and paragraph 4A relates to the assessment of disablement for the purposes of section 36 of the Act, that is to say for the purposes of severe disablement allowance. It provides:

"4A. Paragraph 4 above shall not apply in the case of an assessment of any person's disablement for the purposes of section 36 but the period to be taken into account for any such assessment shall be the period during which that person has suffered and may be expected to continue to suffer from the relevant loss of faculty beginning not later than -

- (a)
- (b)
- (c)

and, in any case, ending not later than the day on which that person, if a woman, attains the age of 65....."

11. On behalf of the adjudication officer it was argued that the allowance should be awarded for the period specified in paragraph 11(1) of the Social Security (Claims and Payments) Regulations 1979. That paragraph provides, as amended,

"11(1) Subject to the following paragraphs, where a medical certificate has been issued in respect of the person named therein ("the claimant") -

- (a) a claim for sickness or invalidity benefit or severe disablement allowance based on the medical certificate shall, unless in any case the Secretary of State otherwise directs, be treated as if made by the claimant for the period specified in that certificate
- (b) on any such claim the benefit may be awarded for the whole or part of that period after the date of the claim but not exceeding 26 weeks or such shorter period as the Secretary of State may in a particular case direct
- (c) if on any such claim the benefit is awarded for part only of the period in respect of which the claim is treated as if made, further decisions in accordance with paragraph (1)(b) awarding such benefit may be given on the same claim".

Conclusion

12. I cannot accept the suggestion of Ms Wood that I have jurisdiction to award a severe disablement allowance to the claimant from 29 November 1984 until she attains the age of 65 years. Paragraph 4A of Schedule 8 to the Social Security Act 1975 (quoted in paragraph 10 above) - on which Ms Wood

placed reliance for this proposition does not confer jurisdiction to make any award. It is concerned with the assessment of a person's disablement, not the period for which an award can be made. Indeed, in a case like the present, to which regulation 20(1) of the 1984 SDA Regulations applies, that disablement does not require to be assessed: see the wording of that regulation, which is set out in paragraph 9 above.

13. (1) In order to obtain an award of severe disablement allowance the claimant must show (a) that she is entitled to that allowance for the period in question and (b) that she has the right to payment of the allowance. Entitlement and the right to payment have been held by the House of Lords, in connection with non-contributory invalidity benefit, to be two distinct concepts. As Lord Scarman, with whom the other four Lords of Appeal expressed their agreement, said in Insurance Officer v McCaffrey [1985] 1 All E.R. 5 at page 7 that:

"First, entitlement is governed by s 36. The section does not define entitlement by reference to the making of a claim or require a claim as a condition precedent to entitlement. Second, s 79(1) has to be construed so as to be consistent with the entitlement which is created by s 36, and not vice versa. Any other approach makes nonsense of s 36. A government department, faced with the complexities of administering social security, may perhaps be forgiven for putting the cart before the horse. But a judge can have no excuse. The logic of entitlement and claim is clear: claim is based on the existence of entitlement. Third, s 79(1) does not speak of 'entitlement'. It merely declares it to be 'a condition of a person's right to any benefit that he makes a claim'. These words do not have to be construed as a reference to entitlement. They can equally well, as a matter of ordinary English, be a reference to the right to be paid. And this is the meaning appropriate to a section dealing with the administration of benefit. Accordingly, I read the subsection as having this effect: a claimant not only has to show the existence of an entitlement but has also to make a claim in the prescribed manner and within the prescribed time in order that he may be paid. This construction avoids introducing a restriction on entitlement not to be found in s 36 and makes sense of s 79(1) as a provision dealing with the administration of benefit."

(The reference to sections in the quoted passage are to sections in similar terms to those in the Social Security Act 1975, as then in force.)

- (2) Subsequent decisions of the Commissioner have applied this principle to other benefits: see, for example, CA/53/84 and CSP/6/84.

14. The practical effect of McCaffrey case has however since been reversed, at least in part, by section 165A. This section was inserted in the Social Security Act 1975, immediately before section 166, by section 17 of the Social Security Act 1985. The inserted section contains a general provision as to necessity of a claim for entitlement to benefit and, in general makes such entitlement to benefit dependent on a claim. Section 17 came into force on 2 September 1985, which is at the end of the period of 6 weeks beginning with the day (22 July 1985) on which the Act was passed: see section 32(3) of that Act. The new section is not however retrospective.

15. (1) I have already decided that the claimant was entitled to a non-contributory invalidity pension from 1 January 1983 to 28 November 1984. It follows that she was so entitled immediately before both 10 September 1984 and 29 November 1984. By virtue of the provisions of regulation 20(1) of the 1984 SDA Regulations, she is accordingly entitled to a severe disablement allowance for 29 November 1984 and for any subsequent days which together with 29 November 1984 fall within a single period of interruption of employment, even though she may not be disabled for the purposes of section 36 of the Act and whether or not the appointed day in respect of her is 29 November 1984 in terms of regulation 20(1)(b). (It is not in dispute that the claimant has been continuously incapable of work since 18 December 1981.)

(2) As regards days falling on or after 2 September 1985 which is the date on which, as explained in paragraph 14 above, section 17 of the Social Security Act 1985 came into operation, the claimant will continue to be so entitled. For the necessary claim to such benefit has been made: see paragraph 16 below.

16. On 26 March 1985, the Secretary of State accepted the claim for non-contributory invalidity pension by the claimant dated 18 December 1981 as a claim for Severe Disablement Allowance from 29 November 1984. Such acceptance is authorised by regulation 9(6) of the Social Security (Claims and Payments) Regulations 1979, as introduced by regulation 17 of the 1984 SDA Regulations. In view of my findings in paragraph 15(1) above, the conditions of section 79(1) of the Social Security Act 1975 that benefit must be duly claimed are, in any event, also deemed to be satisfied in this case, by virtue of regulation 20(2)(b) of the 1984 SDA Regulations.

17. (1) The date of claim in this case was 18 December 1981. As explained in decision R(S) 14/81 in the Appendix at paragraph K, under "Allowance of Claims:

"K. Where by the time of the decision a period in excess of 13 [now 26] weeks has elapsed since the date of claim it is permissible instead of making a series of decisions for up to 13 [now 26] weeks each, for a single decision to be given covering the period to the date of the decision and up to 13 [now 26] weeks thereafter (see Decision R(S) 7/81 at paragraph 20)."

I am in agreement with the paragraph just quoted. In my judgment, the adjudication officer is correct and I have jurisdiction to make an award under regulation 11(1) of the Claims and Payments Regulations for a period down to the date of this decision and for 26 weeks thereafter. Since the necessary conditions for such an award are, as I have already found, at present satisfied this is the award that I now make.

- (2) It should be added that this award will be subject to review if the claimant ceases to satisfy the conditions for payment of the allowance: see regulation 11(2) of the Social Security (Claims and Payments) Regulations 1979.

18. So long as the claimant continues to satisfy the requirements for entitlement referred to in paragraph 1(3) above, she will continue to be entitled to severe disablement allowance for all subsequent days falling within the same single period of employment. My decision on this point is set out in that paragraph. Before payment for these days can be made a further award will be required.

(Signed) V G H Hallett
Commissioner

Date: 16 October 1985

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SOCIAL SECURITY ACTS 1975 TO 1982
CLAIM FOR NON-CONTRIBUTORY INVALIDITY BENEFIT
DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. My interim decision is that the claimant is not entitled to non-contributory invalidity pension from 18 December 1981 to 31 December 1982 (both dates included). My decision on the period subsequent to that date is deferred in order to enable the claimant, if so advised, to produce further medical evidence as to whether she was incapable of performing normal household duties within the meaning of section 36(2) and (7) of the Social Security Act 1975 and relative regulations.

2. I held an oral hearing of this appeal, which was brought with the leave of the chairman of the local tribunal. The claimant was represented by Miss P Wood, Solicitor, of the Stockwell and Clapham Law Centre. The insurance officer was represented by Mrs G M V Leslie. I am indebted to them both for their submissions.

3. On 2 November 1981 a renewal claim for non-contributory invalidity pension from 18 December 1981 was completed on form BF450 and signed by the claimant, who is a married woman living with her husband. The claimant had previously been in receipt of that benefit from 14 February 1981 to 17 December 1981.

4. The relevant law regarding entitlement to such a pension in the case of such a married woman is carefully explained in the written submission of the insurance officer to the local tribunal and I adopt that explanation. Broadly speaking, such a married woman must be incapable of normal household duties, in terms of the regulations, as well as being incapable of work, for any day in respect of which benefit is claimed. She must also have been so incapable, in both respects, for the previous 196 days before the day in issue. It was not disputed in this appeal, and there is clear evidence that the claimant was at all material times incapable of work. The question at issue was whether she was incapable of performing normal household duties in terms of the statutory test.

5. A medical report (Form HA45) was completed on 19 November 1981 by a former partner (Dr Mills) in the same practice as the claimant's current doctor and a report from the consultant whom the claimant had stated had been in charge of her treatment at a hospital she had been attending was completed on 25 May 1982. That consultant was Dr R W Ross-Russell, Consultant Neurologist to St Thomas' Hospital London.

6. The claimant's renewal claim form contains, in Part 3, a list of household activities. Part 3 shows that the claimant can, by herself, do all or most of every one of the listed activities, which number 20, except cleaning windows, of which she is only able to do a little. The claim form was accompanied by a handwritten statement in these terms:

"Although I can do most household jobs, most of the time my problem is when I have a fit because I am epileptic this is when I need the help of others".

7. Dr Mills' report diagnoses the claimant as having epilepsy and recurrent anxiety and depression and states that the main disorder restricting her ability to perform her normal household duties or undertake paid employment was unpredictable fits of variable frequency. Other disorders considered relevant were stated to be depression which was recurrent and at best the claimant was not fully fit. In assessing the mental and physical condition affecting her ability to perform her normal household duties or to undertake paid employment as the uncertain frequency of attacks, Dr Mills wrote that the patient had stated that she felt she knew when an attack was imminent but was able to halt its development if she stayed indoors and rested. Symptoms included dry mouth, vision blurred. The depressive component to this was difficult to ascertain. She was at the time attending neurologists at St Thomas' Hospital who were adjusting therapy. In Dr Mills' assessment of functions, the claimant had normal degree of function on all activities listed on the form (of which there are 15, with some sub-division) except for standing and sustained action where her degree of function was substantial. He remarked, however, that in shopping she had to be accompanied because of anxiety symptoms in crowds, that in standing she became giddy or weak on standing for long periods of time, that she was unable to walk outside the house above about 50% of the time and that in sustained action she needed to rest frequently. He listed as an important condition not brought out in the list of functions that the "Main problem is sustained action at any activity which she finds tires her easily. Lacks sufficient drive to accomplish tasks". Dr Mills considered that the claimant would be as restricted in her ability to perform her normal household tasks as she was then until further notice.

8. Dr Ross-Russell's report of 25 May 1982, was written specifically for the purpose of the claimant's claim for non-contributory invalidity pension for married women. Dr Ross-Russell had before him forms BF 450 and HA45 to which reference has been made in paragraphs 4 and 5, and the claimant's written consent for a report to be obtained. He reported as follows:

"I have examined this patient on two occasions, 28.04.82 and 25.05.82, and a recent EEG has been done. The answers to your questions are as follows:-

1. She suffers from major and minor epileptic seizures, recurrent depression and inadequate personality.
 2. At present she is having only minor seizures with a frequency of 2-4 per week. The attacks last for about 2 minutes and consist of looking blank, with tremulousness in all limbs. She appears to understand what is said to her and can obey simple commands. The attacks are preceded by a feeling of nausea, visual blurring and oscillopsia for about 10 minutes. The patient claims that for about a day after each attack she feels tired and can do nothing except sit around. Medication partially prevents her attacks and she has had no grand mal seizures for the past four months.
 3. Between attacks for about 4 days per week, she is & able to do normal household tasks, such as cooking,
 4. cleaning, shopping, washing and ironing. She has to sit down when ironing.
 5. In my opinion she is incapable of remunerative work at present. She last held a job 6 years ago as a cashier in a supermarket but lost the job because of seizures at work.
 6. Her present incapacity has not been unchanged since 18.12.81.
 7. Her present degree of incapacity is likely to last indefinitely. A recent EEG (20.05.82) shows only minor left temporal irregularity with no clear focal or paroxysmal features. The record is unchanged."
9. On 6 July 1982 an insurance officer decided that non-contributory invalidity pension was not payable in respect of the claim from and including 18 December 1981 on the ground that the claimant had not proved that she was incapable of performing normal household duties in terms of the Act and regulations. The claimant appealed against this decision to the local tribunal who, on 20 December 1982 after seeing and hearing the claimant and her husband, unanimously decided that the claimant was capable of performing housework to a substantial extent. In addition they stated, erroneously, that Dr Ross-Russell had found the claimant fit for remunerative work (this was a misreading of his opinion).

10. The claimant now appeals to the Commissioner, with the leave of the chairman of the local tribunal.

11. The following further medical evidence was produced:

- (1) a letter dated 2 December 1983 from Dr Burton, stating that, among other matters, the claimant had had regular grand mal fits, several times per week, in the last 10 months;
- (2) medical report dated 27 January 1984 from Dr Burton who had been seeing the claimant as her GP for about 12 months, stating that the claimant suffered from epilepsy, anxiety depression and patello femoral osteoarthritis of the right knee. She had had fairly regular major fits in the last twelve months and in particular had had six major fits in two weeks in April 1983. In October 1983 she was having, on average, three major fits per week. At this time her anti-convulsant medication was increased and as a result since then she had had less than one major fit per week;
- (3) a medical report dated 31 January 1984 from Dr Daniels, a senior registrar at the Bethlem Royal Hospital and the Maudsley Hospital, who is a psychiatrist who, when asked whether he was able to express an opinion as to whether the claimant was incapable of performing her household duties to a substantial extent, expressed the opinion that her "household duties could be significantly curtailed by" difficulties which he outlined;
- (4) a medical report from Mr A J Price FRCS, Senior Orthopaedic Registrar, Health Authority, King's College Hospital relating to the claimant's right knee. She had degenerative changes on the articular surface of the patella. No other abnormality was noted. Mr Price did not express any opinion on whether the claimant was incapable of performing normal household duties to a substantial extent;
- (5) at my request, Dr Ross-Russell's reply, dated 2 February 1983, to a request from the claimant's representative for further evidence was produced. Basing his opinion on the results of seeing and examining the claimant on 28 April 1982 and 25 May 1982 he stated that "[the claimant] is capable of doing normal household duties for much of the time. This includes such activities as preparing a meal, doing washing, reaching into cupboards, bending and cleaning floors and making beds. According to her replies to me on 25 5 82 she was able to carry out these activities for about four out of the seven days per week. The remainder of the week, possibly as a result of her epilepsy, she feels tired and unable to do these tasks

because of a feeling of nausea, blurred vision and dizziness. She is never able to go out shopping without help because of the fear that she may have an attack..... The decision as to whether [the claimant] is granted a Housewives Non-contributory Pension seems to me to hinge on the definition of the term "substantial extent". Her illness is a periodic one and it seems clear that she is capable of carrying out these duties for about half the time but for the other half she is incapable by reason of her attacks or their after effects."

12. In connection with the appeal to me the claimant lodged a detailed assessment of her capacity for normal household duties, stating what she used to be able to do before approximately 1978, what she could do during the recovery period following a fit. This assessment was prepared, with the help of her advisers in December 1983 and Miss Wood informed me related to a period from before December 1981. Dr Burton has confirmed it as a fair assessment of her condition in January 1984. It entirely contradicts the claimant's assessment of her capabilities on her claim form of 2 November 1981.

13. The claimant and her husband and their 16 year old daughter gave evidence before me. The claimant confirmed her assessment of December 1983 as representing her functional capacity since 1981. Her evidence was that the claim form completed by her on 2 November 1981 was filled in by herself entirely except for Part 3 relating to her disablement which was completed, at her direction, by an emergency service doctor who was visiting her house. She herself gave no clear explanation as to the nature of the answers in Part 3 but she did confirm that the doctor accurately put down those answers in response to her replies. The general burden of her evidence was that these answers were incorrect and not to be relied upon. The claimant's husband also gave evidence. He stated that he saw the claimant's claim form on his return home. He knew the answers that she gave in the assessment in Part 3 were quite untrue. He himself wrote out the handwritten statement set out in paragraph 6 above. He knew this statement was untrue. The reason that he accepted the forwarding of these untrue statements to the Department of Health and Social Security was that his wife did not wish to admit to herself that she was incapable of household duties. It was only subsequently that she came to terms with this and admitted it to herself. The daughter gave evidence to the effect that as regards various household duties she carried them out because her mother was unable to do them.

14. On the basis of the claimant's own assessment on her claim form of her functional capacity, and of Dr Mills' assessment and the report of Dr Ross-Russell, it is in my judgment, perfectly clear that during the period from 18 December 1981 and until there was some clear deterioration in her condition, the claimant was capable of performing almost all normal household duties. She needed to be accompanied when shopping (see Dr Mills' and Dr Ross-Russell's reports), she needed to rest frequently if she cleaned the windows or was ironing or in similar sustained action. But the claimant's

own assessment and statement, taken with Dr Mills' assessment and Dr Ross-Russell's assessment makes it quite clear to my mind that it was only during the time when he was suffering from or recovering from a fit that the claimant was incapable of normal household duties and that these fits were not sufficiently frequent to provide the necessary 196 days continuity of incapacity for normal household duties. I accept that under regulation 6 read with regulation 13 of the Social Security (Non-contributory Invalidity Benefit) Regulations 1975 the claimant can be deemed to have been incapable of such duties up to 17 December 1981. But I am not satisfied that on the basis of the evidence considered in this paragraph, she was so incapable on 18 December 1981 nor that, during any of the subsequent period down to and including 18 June 1982 the claimant was continuously incapable of normal household duties. There is no acceptable evidence that the claimant's condition had deteriorated during any of this period.

15. I do not accept that the claimant's original assessment of her own capacity and the letter written for her by her husband at her dictation were both untrue. After seeing and hearing them both give evidence and be cross-examined I find myself quite unable to credit this suggestion. Nor can I accept the allegation, made by the claimant, that Dr Ross-Russell did not listen to or understand her answers. Furthermore, his findings are consistent with the written statement written by her husband on her behalf and with the report of Dr Mills and Dr Ross-Russell had, in addition to the claimant's oral answers, her own form and Dr Mills' report, the advantage of a recent EEG which could have provided him with objective information. Dr Ross-Russell had also seen and examined the claimant on a previous occasion. As the Consultant Physician in charge of the claimant's treatment in the Department of Neurology at St Thomas's Hospital, one of the principal London teaching hospitals, Dr Ross-Russell's opinion on the disabling effect of her epilepsy carries great weight.

16. There is, however, some medical evidence that the claimant's condition at the beginning of 1983 was worse than at the time of the reports made by Dr Mills and Dr Ross-Russell on 19 November 1981 and 25 May 1982 respectively and that this deterioration continued until the end of October 1983 when the claimant's liability to fits was brought under better control and reduced to less than one major fit per week. If I had jurisdiction to terminate my disallowance of the renewal claim of 2 November 1981 on 31 December 1982, I would do so, making it clear that my positive finding that the claimant was not continuously incapable of normal household duties related to the period down to and including 18 June 1982 (some 4 weeks after Dr Ross-Russell's report of 25 May 1982); and that the disallowance down to 31 December 1982 was based on the fact that no award can be made for 196 days after the last day on which a claimant has been shown to have been capable of normal household duties. This would have left it open to the claimant to make a further claim and to show, on producing adequate evidence, that from 1 January 1983 she was incapable of normal household duties and that she had been so

incapable for the previous 196 days. The earlier decision would not have precluded her from succeeding on a subsequent claim from the day after that on which the disallowance terminated.

17. I am, however, bound by a reported decision of an unanimous Tribunal of Commissioners to dispose of the entire claim down to the date of my decision: see Decision R(S) 1/83 at paragraph 10. On the present evidence, I am not satisfied that there was any day subsequent to 31 December 1982 during which it could be said that the claimant had been incapable of normal household duties for that day and for the previous 196 days. That decision, however, leaves it open to me to give an interim decision on an open-ended claim of this character, imposing a disallowance down to a specified date (I have chosen 31 December 1982) which is earlier than the date of my decision and to call for further medical evidence if that evidence could lead to an award of benefit for the most recent period before me: see paragraph 12 of the above-mentioned decision. This is the course that I now adopt.

18. If no such evidence is lodged within a reasonable time after the date of this interim decision, a reminder will be sent to the claimant or her advisers from the Office of the Social Security Commissioners and, if further evidence is still not forthcoming, I will dispose of the period from and including 1 January 1983 down to the date when my final decision is given, on the basis of the existing evidence.

19. My interim decision is set out in paragraph 1.

(Signed) V G H Hallett
Commissioner

Date: 22 May 1984

Commissioner's File: C.S. 391/1983
C I O File: I.O. 3144/NV/83
Region: North Fylde Central Office