

JBM/SH/13/MD

Commissioner's File: CS/408/1984
C A O File: AO 3467/NV/84
Region: North Fylde Central Office

**SOCIAL SECURITY ACTS 1975 TO 1986
CLAIM FOR NON-CONTRIBUTORY INVALIDITY BENEFIT
DECISION OF THE SOCIAL SECURITY COMMISSIONER**

Name: Mohammad Shafi for Ghulam Fatima Shafi (Mrs)
Appeal Tribunal: Manchester
Case No: 2/2

[ORAL HEARING]

1. My decision is that non-contributory invalidity pension is not payable in respect of the claim from and including 2 June 1983 because the claimant has not proved that she was incapable of work by reason of some specific disease or bodily or mental disablement. Social Security Act 1975, section 36.

2. This is an appeal to the Commissioner with the leave of the local tribunal chairman against the unanimous decision of the local tribunal confirming the insurance (now adjudication) officer's decision shown in Box 1 on Form LT2. On 29 January 1985 I made the following direction:-

"I require a further submission;

- (i) I require the medical evidence on which the previous claim was allowed to be produced;
- (ii) I require the claimant to be examined by a consultant psychiatrist who should be asked to fill in a Form HA45 and
- (iii) I require a further submission by the adjudication officer in the light of (i) and (ii) above.

The Office of the Commissioner made enquiries on a number of occasions as to the progress of the submission in respect of the direction. On 6 November 1986 the adjudication officer now concerned made a submission in respect of my direction and explained the delay as follows:-

"I apologise to the Commissioner for the delay in preparing this further submission but considerable difficulty was experienced in obtaining the requisite report from the consultant psychiatrist. Although Mr P Maguire, Senior Lecturer in Psychiatry at Withington Hospital, Manchester saw the claimant on two occasions at the hospital he only prepared an interim report in January 1986 because there was a considerable

language difficulty and he wished to assess the claimant in her own home, assisted by an interpreter. .."

On 19 March 1987 I directed an oral hearing. The claimant's husband was present and represented the claimant. The claimant was not herself present as I was informed she was unwell. The adjudication officer was represented by Miss Judith Rowe of Counsel.

3. A preliminary point arises as dealt with at paragraph 5 of the submission dated 4 December 1984 of the adjudication officer now concerned in regard to the claimant's completion of Form AT33 without stating the grounds of the appeal to me. In my judgment I can decide the case as it stands and I proceed so to do.

4. The facts are dealt with by the adjudication officer first concerned in these appeals in Box 5 of Form LT2 on which the claimant has had the opportunity to comment (and has so commented). No useful purpose would be served by my setting out these matters afresh here. I would however add that in response to my direction dated 29 January 1985 I now have dated 6 November 1986 the further submission of the adjudication officer now concerned and the additional documents now contained in the case papers at pages numbered 50 to 75.

5. The relevant law (both statutory and otherwise) is adequately set out in the respective submissions of the two adjudication officers who have been involved in these appeals. Nothing is to be gained by my rehearsing that law here.

6. Mr Shafi (the claimant's husband) told me of the claimant's state of health and the difficulties he encountered in that respect. Miss Rowe referred me to the case papers and adhered to the written submissions of the adjudication officers firstly and secondly concerned in these appeals. She addressed me both as to the claimant's capacity for work and for household duty and referred me expressly to the contemporaneous evidence that is the report on Form HA45 dated 1 July 1983 and in particular the answer to question 3 and to the letter dated 31 May 1983.

7. To be entitled to non-contributory invalidity pension for any day the claimant has to show that on that day she was incapable of both work and of normal household duties. If she was not incapable of work the claim fails. Accordingly I turn to the issue of whether the claimant was at the relevant time incapable of work within the meaning of section 17(1)(a) of the Social Security Act 1975. Though there is a volume of medical evidence both prior to and following the relevant period at issue it is to the contemporaneous evidence that I must turn and which gives me most assistance. In a letter dated 31 May 1983 the claimant's own doctor declined to complete medical Form HA45 and added that the claimant "is rather depressed and speaks no English and to that extent is limited and certainly could not take outside employment ..". The doctor who examined the claimant and completed Form HA45 dated 1 July 1983 expressed the opinion on question number 3 that the claimant was not incapable of part-time or full-time work. Mr Maguire the consultant psychiatrist who examined the claimant in response to my direction dated 29 January 1985 produced two reports which reflect the claimant's present condition but do not provide a retrospective assessment of her condition from June 1983 onwards. Accordingly it is the contemporaneous medical reports to which I have alluded earlier in this paragraph that I must turn. Accordingly on the medical evidence before me I find the claimant at the relevant date not incapable of either part-time or full-time paid work. Accordingly no other questions falls for consideration. My decision is as set out in paragraph 1 of this decision.

8. Accordingly the claimant's husband's appeal is dismissed.

I would only add that I have considerable sympathy with the claimant's husband who in his address to me was clearly under severe emotional strain.

(Signed) J.B. Morcom
Commissioner

Date: 20th July 1987