

C.S. 931/1979

JSW/GJH

SOCIAL SECURITY ACTS 1975 TO 1980

CLAIM FOR NON-CONTRIBUTORY INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision C.S. 2/81

1. My decision is that non-contributory invalidity pension is payable to the claimant from and including 13 September 1978 because she has proved that she was and is incapable of performing normal household duties by reason of some specific disease or bodily or mental disablement as provided by section 36 of the Social Security Act 1975 and regulation 13A of the Social Security (Non-Contributory Invalidity Pension) Regulations 1975, as amended.

2. The claimant, now aged 54, resides with her husband and her household includes a son over the age of 16 years. There is also a daughter, since married, who is not now included in the household. The claimant's doctor reported that in 1971 she had had the upper lobe of her left lung removed from which she appears to have made very good recovery. She also suffers from cervical spondylosis and possibly from diverticular disease. Her husband has stated that she suffers from blood pressure and has been treated for violent headaches. The claimant complains of shortness of breath and back pains and that she soon tires and cannot perform her household duties to any material extent.

3. Her doctor, on form HA 45, dated 21 September 1977, has indicated, in the table under paragraph 4, that she is substantially impaired for standing and kneeling, slightly impaired for lifting, carrying, reaching out and up, bending, walking outside the home and climbing stairs. In his opinion, she is unimpaired for walking within the home, manipulative ability, such as turning taps and peeling vegetables, planning, organising shopping and daily routine and communication for dealing with tradesmen and shopping. Her doctor added that she was able to do most of the above tasks but soon tired and had to stop. If she goes shopping, she is unable to carry a heavy basket and is dependent on the family to assist her. At the hearing of the claimant's appeal by the local tribunal, it was stated that she could not do the shopping or cook a full meal because she was unable to lift full pans and dishes. She had to

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stop while walking up stairs and relied on her daughter to do the shopping.

4. It is not disputed that the claimant satisfied the provisions as to being incapable of work. She was awarded the pension to 12 September 1978 on the basis of regulation 13A before it was amended as set out in the written submission of the insurance officer to the local tribunal. Having carefully considered the available medical evidence and taken account of the other evidence, it is apparent that the claimant is handicapped for performing her normal household duties. That, however, is not sufficient to qualify for the pension. In the written submission to the Commissioner, the insurance officer has referred to Decision C.S. 3/79, now reported as Decision R(S) 6/79, and to the two questions posed in paragraph 10 of that decision, as follows:-

- 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".

5. Although, according to her doctor, the claimant is able to do most of the tasks listed on form HA 45, he has qualified that by stating that she soon tires and has to stop. In paragraph 1 of his report, the doctor stated that the claimant is quite unable to work or to fully follow her household duties because of her condition. In my opinion, if a married woman is able to perform normal household duties to such a limited extent that her condition causes her to stop before completion, that may constitute incapacity to perform such duties to any substantial extent. The extent to which it may be substantial is a question of fact and degree depending upon all the circumstances of the case. That should be determined by considering her household duties as a whole and not by deciding whether or not she is capable of performing each particular task on its own. She might not be incapable of performing each task adequately on its own but would nevertheless require substantial assistance or supervision in order to perform, in reasonable time and to a reasonable degree, her household duties as a whole.

6. Having regard to the conditions from which the claimant was and is suffering and to the report of her doctor on their effect in relation to her household duties, I find, on a balance of probabilities, that she was and is incapable of performing normal household duties without substantial assistance from or supervision by another person and that she cannot reasonably be expected to perform such duties to

any substantial extent. It follows that the answer to the first question posed in paragraph 10 of Decision R(S) 6/79 is in the negative and the appeal succeeds.

7. The claimant's appeal is allowed.

(Signed) J S Watson  
Commissioner

Date: 29 January 1981

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C I O File: I.O. 1972/NV/79  
Region: HNCIP Unit NFCO