6. The claimant is the parent of the child, and ordinarily the latter does not live with him, but with his ex-wife, and it is she who receives child benefit in respect of her. The claimant has contributed to the child's maintenance at a rate exceeding £1.25 per week, the minimum amount specified in Part IV of Schedule 4 to the Act, and it follows necessarily from this that under the provisions of Regulation 4A(2) the claimant can be treated as entitled to child benefit. He will therefore receive an increase of invalidity benefit pursuant to section 41(1) of the Act, provided, of course, that he can satisfy the conditions laid down in section 43(1) and (2). Section 43(1)(b) provides that the requisite contributions must be made to the cost of maintaining the child, and Section 43(2)(a) stipulates that the contributions must be made at a weekly rate not less than the amount referred to in subsection (1). The insurance officer contends that the amount which the claimant is required to pay is the amount to which he is entitled under section 41(1), i.e. £7.50 per week.

7. Now, this approach proceeds on the basis that section 41(1) is to be looked at in isolation, without regard to any modifying effect of any other statutory provision. The insurance officer's interpretation disregards the effect of Regulation 8 of the Social Security (Overlapping Benefits) Regulations 1979 (S.I. 1979 No. 597) which provides as follows:

> "Benefit under the Act shall not be required to be adjusted by reference to child benefit other than where an increase of child benefit is payable to a person who—
>
> (a) either has no spouse or is not residing with his spouse; and
>
> (b) is not living with any other person as his spouse,
>
> and for the same period, in respect of the same child, any benefit or allowance or increase of a benefit or allowance under the Act is or, but for this regulation, would be payable to a beneficiary, [whereupon] the weekly rate of that benefit or allowance or increase thereof shall be reduced by the amount of the said increase of child benefit".

Although the regulation is not felicitously expressed—the word "whereupon" inserted between "payable to a beneficiary" and "the weekly rate of that benefit" would have made for easier reading—nevertheless the meaning is clear, and the regulation operates to reduce an entitlement to an increase of invalidity benefit in respect of a child where an increase of child benefit is also payable in respect of that child.

8. In my judgment, each section of the Act has to be construed in the light of every other relevant statutory provision. Accordingly, when section 43(2)(a) refers to the requisite contributions as having to be "made at a weekly rate not less than the amount referred to in subsection (1)" the figure referred to is the amount prescribed by section 41 *as reduced by the effect of Regulation 8,* which in the present case comes to £4.50. Any other view would result in a claimant in receipt of an increase in invalidity benefit for a child, in respect of whom an increase of child benefit is payable, being required to pay by way of maintenance for that child an amount appreciably in excess of the increase of invalidity benefit received, and failure so to do would result in his not getting any increase of invalidity benefit in respect of that child. Such a result would be manifestly unjust, and I ought to be slow to find that Parliament so intended.

9. However, the insurance officer argues that, whereas in the case of an *adult* dependant Regulation 11(1)(b) of the Social Security Benefit (Dependency) Regulations 1977 (S.I. 1977 No. 343) allows a claimant to be deemed to satisfy the conditions for an increase, where such increase is at less than the standard rate, if he contributes to the maintenance of the

dependant at a weekly rate not less than that of such increase, there is no similar provision in respect of a child dependant. The insurance officer argues that the inference to be drawn from this is that in the case of children the concession conferred by Regulation 11(1)(b) is not to apply. I see the force of this argument, but I do not think that I can attach enough weight to it to displace the interpretation I have given to the effect of section 41(1) in paragraph 8 of this decision.

10. In any event, I think I am driven to reach the same conclusion by regulation 16 of the Social Security (Overlapping Benefits) Regulations 1979, which reads as follows:—

> "Any person who would be entitled to any benefit under the Act but for these regulations shall be treated as if he were entitled thereto for the purpose of any rights or obligations under the Act and the regulations made under it (whether of himself or some other person) which depend on his being so entitled, other than for the purposes of the right to payment of that benefit".

In my judgment the effect of this provision is that, although by virtue of regulation 8 the claimant is not entitled to payment of the full £7.50 per week increase of invalidity benefit in respect of his daughter he is still to be treated as having received £7.50, and as it is accepted (see paragraph 11) that he handed over to his wife all that he received by way of increase of invalidity benefit in respect of their daughter, he must be deemed to have handed over the full £7.50 per week.

11. The claimant has given an undertaking to pay his ex-wife £4.50 per week and he has faithfully honoured this undertaking. Accordingly, he can rely on Regulation 5(1) of the Social Security Benefit (Dependency) Regulations 1977 (S.I. 1977 No. 343). It follows that, in my judgment, he has satisfied all the relevant conditions for an award, and he is therefore entitled to an increase of invalidity benefit for the period set out in paragraph 1.

12. Accordingly, I dismiss this appeal.

(Signed) D G Rice
Commissioner

5.10.81

R(S) 11/81

NON-CONTRIBUTORY INVALIDITY PENSION

Incapacity to perform normal household duties to any substantial extent.

The claimant, a married woman aged 59, suffered from diabetes mellitus, mild neuropathy, widespread osteo-arthritis and anaemia. Her doctor reported she was able to do most household tasks to some degree although it was established she received considerable help from her family.

Held that:

1. The tasks that the claimant was able to do were ancillary activities i.e. while contributing to a main activity they did not *by themselves* do much to further the running of the family home. Ancillary activities should not be totalled to make up a substantial amount of household duties. Whilst capable of certain ancillary activities, if the claimant requires the assistance of another person to complete the main activity her contribution should be ignored. A claimant's ability to perform household duties should be assessed with regard to main activities and these should not be fragmented by the determining authorities (paragraph 14).

2. Non-contributory invalidity pension is payable from and including 17.11.80 (paragraphs 1 and 18).

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1. The claimant is a housewife who claims non-contributory invalidity pension ("the pension"). She appeals from a decision of the local tribunal dated 14 November 1979 which—

(a) reversed one decision of the insurance officer dated 18 July 1979; and

(b) varied another decision of the insurance officer of the same date.

(By none of these decisions was any award made to the claimant). My decision is as follows:

(1) The pension is not payable to the claimant from 1 February 1979 to 16 November 1980 (both dates included) because the claimant has not proved that she was at any time prior to 5 May 1980 incapable of performing normal household duties by reason of some specific disease or bodily or mental disablement.

(2) The pension is payable to the claimant from and including 17 November 1980 because the claimant has proved that since 5 May 1980 she has been and remains incapable of performing normal household duties by reason of some specific disease or bodily or mental disablement.

I am informed that since 4 February 1981 the claimant's husband has been in receipt of retirement pension, with an increase of £7.66 per week for the claimant. Pursuant to regulation 14 of the Social Security (General Benefit) Regulations 1974 [S.I. 1974 No 2079] all sums paid by way of such increase fall to be treated as having been properly paid and the arrears of the pension payable to the claimant will be reduced accordingly. Pursuant to regulation 10 of the Social Security (Overlapping Benefits) Regulations 1979 [S.I. 1979] the increase will not hereafter be payable for so long as the pension is payable to the claimant.

2. I held an oral hearing of this appeal on 20 July 1981. The claimant was represented by Mr R. Spicer of counsel, to whom, in common with the insurance officer's representative, I am indebted for a thorough and most helpful presentation of the case.

3. The claimant is a married woman now aged 59. She is of Indian origins and clearly maintains, so far as is consistent with conditions in this country, an Indian style of living. She speaks little or no English. She went from India to Kenya in 1949. On 1 February 1969 she and her immediate family came to England, where they have resided ever since. At all times material to this decision she has lived in a house with her husband and a son, Praful, who is now aged 25. Her husband is at home for most of the time. Praful, who for the 4 years prior to the autumn of 1979 was away from home studying engineering, has a full-time day job. He is at home in the evenings and at weekends. "Round the corner" lives the claimant's daughter-in-law. She has 3 children, of whom the eldest is about 9 years old. She does a part-time job. About 5 miles away lives a married daughter of the claimant. This daughter has two young children. She works full-time as a typist.

4. The claimant suffers from—

(a) diabetes mellitus;

(b) mild neuropathy in consequence of (a);

(c) widespread osteoarthritis; and

(d) anaemia.

The insurance officer has never disputed that she has at all material times been incapable of remunerative work. I am, accordingly, concerned with only two issues:

(i) Is the claimant incapable of performing normal household duties?

(ii) If so, for how long has she been so incapable?

5. The relevant law clearly appears from the respective submissions of the two insurance officers who have been involved in this claim and from the copies of (now reported) decisions which have been included in the papers. For present purposes it suffices to say that the crucial questions arising under issue (i) as set out in paragraph 4 above are:

(a) Can the claimant without substantial assistance or supervision from another person perform normal household duties to any substantial extent?

(b) Can she without such assistance or supervision be reasonably expected to perform normal household duties to any substantial extent?

A negative answer to question (a) results in her being treated as incapable of normal household duties. A positive answer raises questions (b). If the answer to this question is positive, the claim will fail. If it is negative, the claim will succeed. "Substantial" falls to be given its ordinary meaning: weighty, ample, considerable. These are all equally imprecise terms. Parliament has intentionally left to the determining authorities the task of drawing the line in the infinitely varying circumstances of the cases which come before them.

6. The claimant first claimed the pension in September 1977. That claim was doomed to failure since she had not then satisfied the 10 years residence condition. On 10 April 1979 she made a fresh claim, "from earliest eligible date"—but on the wrong form. Finally, on 30 April 1979, she completed a form BF 450, on which she stated that she had become unfit for normal housework in 1972. The Secretary of State has accepted the form which was signed on 10 April 1979 as constituting a claim for the pension. The upshot is that what is now before me is a claim for the pension as from 1 February 1979. Moreover, the insurance officer now concerned does not seek to disturb the local tribunal's finding that the claimant had continuous good cause for her delay in making her claim.

7. The supporting form HA 45 was completed by the claimant's doctor on 7 June 1979. I do not intend to go into the details either of what was written on that form or of what was written on the form BF 450 of 30 April 1979. As is implicit in my decision as set out in paragraph 1 above, I do not consider that the claimant was at any time prior to 5 May 1980 incapable of performing normal household duties. Had her case depended solely upon the evidence set out on the form HA 45, it would have failed in its entirety. In so far as my decision is favourable to the claimant it is based almost entirely upon the evidence which I heard on 20 July 1981. I make, therefore, only two comments in respect of the form HA 45:

(i) Questions 7 and 8 on that form are answered: "Until further notice". The claim, accordingly, falls to be treated as open-ended.

(ii) To question 5 on the form the doctor answered to the effect that the claimant's own statement of her limitations (i.e. on form BF 450) was broadly consistent with his own assessment. This generalisation is not easy to reconcile with certain marked discrepancies between, on the one hand, the claimant's detailed

description of her limitations (in paragraph 21 of form BF 450) and, on the other hand, the doctor's detailed assessment (in paragraph 4 of form HA 45).

8. The claimant's son Praful, who speaks excellent English, gave full and particularised evidence before me. Let me say at once that I accept him as a careful and reliable witness. He began by giving a detailed account of a normal day in the routine of the claimant's household. He described the assistance which the claimant regularly receives from—

(a) her daughter-in-law;

(b) the son who is married to that daughter-in-law;

(c) her daughter;

(d) her son-in-law; and

(e) Praful himself.

Every one of these relatives has heavy commitments in respect of his or her own time. Nevertheless, in the high traditions of the culture from which they are sprung, they have organised their own respective lives so as to ensure that the claimant lacks for nothing by way of household assistance. Praful told me that the claimant "helps out as she can". It seems clear, however, that even if the claimant did no housework at all the existing "cover" provided by these relatives would suffice to keep her household running at a more than acceptable level of efficiency.

9. The case does not, of course, fall to be decided by reference to the housework which the claimant actually does. It is my task to ascertain what the claimant could do, or could reasonably be expected to do, were none of this help forthcoming. However, I am entitled—indeed obliged—to have regard to the particular circumstances and demands of the household of which the claimant is a member. In this context the following facts are material:

(a) The preparation of meals is, to adopt Mr Spicer's phrase, "labour intensive". Praful told me that Indian meals do not vary much from day to day. They do not, accordingly, call for much planning. On the other hand, they contain little or nothing of the frozen and/or ready-to-use ingredients which do so much to lighten the burden of most English housewives. Vegetables are bought "in the raw" and have to be prepared. Chapatis are a staple. The dough has to be mixed, kneaded and rolled daily. Cooking is done on top of the stove, where it must, of course, be watched. The oven is little used.

(b) The laundering, including that of the bed-sheets, is done at home. There is a washing-machine, but most of the washing is done by hand. Cotton saris can be washed in the machine, but nylon saris cannot. The latter constitute the majority. Drying takes place on a line in the garden. Ironing is, of course, done at home.

(c) The house is a "two-up, two-downer". The kitchen is at the back, on the ground-floor. There is a 7 inch step between the kitchen and the dining-room.

10. Praful gave a detailed description of what, in his view, the claimant could and could not do. If the aforesaid assistance were not forthcoming, he said, the claimant would try to keep the household running. She would not, however, be able to prepare or cook a meal, since arthritis in her fingers now inhibits her from cutting anything hard. Even preparing the dough for the chapatis would prolong to 45 minutes a task which is normally done in 10 to 15 minutes. The claimant would not be able to do

very much of the laundry—again because of the condition of her fingers. She could not iron. She could not effectively use the vacuum-cleaner since she could not move the furniture around. She would be unable to do anything approaching heavy cleaning—not even polishing. Indeed, her mobility is so restricted that she limits so far as possible her visits to the lavatory upstairs. She would be able to wipe the cooker but not to clean it. She would be unable to carry home anything more than a modest quantity of shopping. Her eyesight is poor. This, combined with the arthritis in her fingers, makes sewing impossible.

11. With the help of the skilful, and scrupulously fair, cross-examination by the insurance officer's representative, it was established that the claimant *would* be able to do the following:

(a) She could load the washing-machine and switch it on, provided that someone else had moved it into its operating position and connected it up to the water and power supplies. She could not unload from it anything but the smaller items.

(b) She could hang such smaller items on the line, but could take nothing off the line.

(c) She could plan the meals and supervise the running of the household.

(d) She could lay and clear the table (but see paragraph 12 below).

(e) She could serve food out of the main dish.

(f) She could make tea.

(g) She could put away small items of clothing.

(h) She could "dust around".

(i) She could bring home modest quantities of shopping.

(j) She could prepare the dough for the chapatis (cf paragraph 10 above).

12. It is obvious from Praful's evidence that the claimant does try to make an active contribution to the running of her home. It is equally obvious, however, that these efforts are attended by no small risk to the claimant's own health and safety. Not only does she tend to drop things. On one occasion, about 3 months before the oral hearing, she collapsed whilst trying to clear the table. Praful found her lying on the floor between the dining-room and the kitchen. An ambulance was called. The ambulance-men asked her whether she wished to be taken to hospital, but she indicated that she would prefer to stay at home. Her own doctor was called and came. Something over a year ago she was standing by the gas cooker, frying chapatis, when her sari caught fire. Fortunately her daughter-in-law was at hand and was able to extinguish the fire promptly. Shortly thereafter the claimant burned her fingers—again whilst frying chapatis.

13. The claimant herself attended the hearing before me—although I doubt whether she understood a word of what was going on. Mr Spicer called her to the witness-box after Praful had given his evidence. It was immediately apparent that the language difficulty would be formidable. Although Praful would have been accepted by me as an interpreter, Mr Spicer elected forthwith to rest his case upon Praful's evidence. In the somewhat exceptional circumstances of this appeal, that decision was a reasonable one. As I have already said, Praful's evidence was clear and detailed—and based upon close and direct observation of the claimant. I suspect that nothing but the consumption of time would have ensued from an attempt to take the claimant through the gist of what Praful had said. Cross-examination through an interpreter is notoriously difficult and

unrewarding. Very fairly and properly the insurance officer's representative took no point in respect of the lack of oral evidence from the claimant herself.

14. How then does the matter stand? It is readily apparent that almost all of the activities which I have set out under paragraph 11 above are merely ancillary activities; i.e. they contribute to a main activity but would not *by themselves* do much to further the running of a family home. As appears from paragraph 5 above, the test is directed to what the claimant can do "without substantial assistance or supervision from another person". This crucial qualification can be deprived of all effect if the determining authorities are to indulge in the fragmentation of what I have referred to as "main" activities. For example: I regard bed-making as a main activity. A claimant may be capable of smoothing the bottom sheet and rearranging the pillows. But if she is not capable of pulling up and tucking in the blankets she is not, in my view, capable of bed-making. Her contribution is of negligible value unless there is someone there to complete the job. That contribution falls, accordingly, to be wholly ignored. It cannot legitimately be thrown into the scales, along with similar "ancillary" contributions, so as to make up, in the end, a "substantial" amount of normal household duties. By the same token, it is idle to have regard to the ability to plan a meal and to serve it from the main dish if that meal cannot be prepared and cooked without the significant intervention of another. The criteria, as prescribed by Parliament, are stringent enough already. The determining authorities should not be astute to render them almost incapable of satisfaction.

15. The matter can be looked at from a slightly different angle: What would be the state of this household were the claimant required to run it without substantial assistance? It would be kept dusted and its occupants would never want for a cup of tea. They could eat uncooked chapati dough, and also such light items of food as the claimant was able to carry home and which did not need cooking. And that is about the sum of it. I hardly think that any of these occupants would regard the household of being "amply" run (cf the expansion of "substantial" referred to in paragraph 5 above).

16. There is not, of course, before me any medical evidence which relates to the claimant's condition at any time later than 7 June 1979. Incapacity for performing normal household duties is not an issue which falls to be decided solely upon medical evidence. (If it were, there would seldom be any point in hearing the evidence of the claimant herself). Nevertheless, the medical evidence is normally very important. In ordinary circumstances I should not have decided this appeal in favour of the claimant until I had seen some expert confirmation of the view which I have formed as to her present condition. The circumstances of this case are not, however, ordinary. Diagnosis is not in doubt. I am concerned with symptoms and the severity thereof. The assessment of these depends almost entirely upon a detailed description of what the claimant can and cannot do—and upon the credence to be put on such description. I have had the advantage of hearing a description of a length and detail exceeding anything to which a general practitioner could reasonably be expected to listen when conducting a medical examination. Moreover, that description was given by an educated man and in excellent English. I do not for one moment believe that the claimant herself, through an interpreter, could give to her general practitioner more than a fraction of the picture which is now before me. I have concluded, accordingly, that nothing is to be gained by seeking up-to-date medical evidence.

17. I am satisfied that the claimant cannot without substantial assistance from another person perform normal household duties to any substantial extent. It remains for me to establish the date upon which she first became so incapable. This cannot be an exact exercise. I am satisfied that the claimant was not so incapable in June 1979, when her general practitioner signed the form HA 45. Praful told me, however, that in the two years since he returned to live at home the claimant has got steadily worse. It seems to have been in or about the early summer of 1980 that the claimant's sari caught fire whilst she was cooking chapatis. From that date, at the latest, she could not, in my view, reasonably be expected to take any further part in the cooking. (She in fact did try to take such part and burned her fingers—paragraph 12 above). I regard it as probable that when she ceased to be fit to cook, without danger to herself and the household, the duties of which she was capable crossed the borderline between substantial and insubstantial. Moreover, it would be an extraordinary coincidence if her incapacity safely to cook first arose upon the very day that her sari caught fire. As I have indicated, I cannot do other than make an informed guess. Upon the evidence before me I find that the claimant became incapable of performing normal household duties on 5 May 1980, with the result that the pension is payable to her from and including 17 November 1980 (i.e. the first day following the period of 196 days commencing on 5 May 1980). The arrears of the pension will, of course, be affected by the reduction referred to in the penultimate sentence of paragraph 1 above.

18. That part of my decision which is set out in sub-paragraph (2) of paragraph 1 above is expressed in a form which has frequently been used by Commissioners since the introduction of the pension. Unreported Decision C.S. 15/81, which deals at some length with matters of procedure and jurisdiction in respect of claims for the pension, was decided after I had concluded the oral hearing in the instant appeal. I have not, accordingly, heard any argument as to whether the propositions and reasoning set out in C.S. 15/81 affect what I understand to be the effect of a decision given in the form which I have adopted. As presently advised I do not think that they do. For the avoidance of doubt, however, I spell out what I consider, and intend, the effect of my decision to be:

(a) To the extent that the claim relates to the inclusive period 1 February 1979 to 16 November 1980 the claim is disallowed.

(b) To the extent that the claim relates to the period 17 November 1980 "until further notice"—

  (i) the pension is awarded from and including 17 November 1980 down to and including the date of this decision; but

  (ii) it is not my intention that the claim should be thereby finally disposed of; so

  (iii) it will be for the insurance officer to decide whether any further award or awards should be made under this claim (pursuant to section 79(3) of the Social Security Act 1975); and consequently

  (iv) this claim will not be finally disposed of until such time as the insurance officer decides that no further award thereunder shall be made.

I do not consider that there is anything surprising, let alone repugnant, about conclusion (iv). The legislation clearly envisages open-ended claims for the pension. What *would* be surprising would be a conclusion which had the result that claimants whose open-ended claims are disallowed *in toto* by the insurance officer but are allowed on appeal must always be in a worse position than claimants whose open-ended claims are allowed by the

insurance officer. This would be the inevitable consequences if in such cases the appellate authorities were obliged finally to dispose of the relevant claim, for the claimant would then have to make a fresh claim and set about proving her case all over again.

19. The claimant's appeal is allowed to the extent set out in paragraph 1 above.

(Signed) J. Mitchell
Commissioner

R(S) 12/81
(Tribunal Decision)
(Scottish Case)

2.11.81

INVALIDITY BENEFIT

Local Tribunal decisions—setting aside

The claimant had indicated that he intended to be present and represented at the local tribunal hearing of his appeal but neither he nor his representative attended and the tribunal quite properly proceeded to determine the appeal. The claimant later applied unsuccessfully to have the tribunal decision set aside under the provisions of the Social Security (Correction and Setting Aside of Decisions) Regulations 1975. A Tribunal of Commissioners considered the issues of general importance raised by the procedure followed in connection with the application.

Held that:—

1. it is an indispensable requirement that every person interested in the decision should have the opportunity to make representations upon the application before it is determined (paragraph 10);

2. when the informal postal procedure for obtaining the views of the local tribunal is adopted it is vital that the claimant's grounds of application and the insurance officer's representations be copied to the members (paragraph 11);

3. the informal postal procedure cannot be regarded as providing an adequate determination in cases of dissent or unanimous refusal (paragraph 11);

4. if a claimant satisfies a local tribunal that it is just to set aside an earlier decision it is outwith the proper scope of the tribunal's discretion to go on to consider whether the content of his evidence would have been likely to affect that decision (paragraph 13);

5. the determination of a reconvened tribunal upon an application to set aside a previous decision may validly be reached either unanimously or by a majority (paragraph 13).

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1. Our decision is that invalidity benefit is not payable to the claimant from 31 July 1980 to 27 August 1980 (both dates included) upon the ground that the claimant has failed to establish that he was then incapable of work within the meaning of sections 15(1) and 17(1)(a)(ii) of the Social Security Act 1975.

2. The merits of the claimant's appeal relate to the issue of the claimant's capacity or incapacity for work as a labourer for the purposes of his claim to invalidity benefit in the period referred to in paragraph 1 above. The appeal has however been considered by a Tribunal of Commissioners because of the issues of general importance raised by the procedure followed in connection with an application by the claimant to have the

decision of the local tribunal set aside under the provisions of the Social Security (Correction and Setting Aside of Decisions) Regulations 1975. An oral hearing was held before us at which the claimant who attended in person was represented by Mrs. Davidson of Easterhouse Claimants' Union, Glasgow, and the insurance officer was represented by Mr. James of the Solicitor's Office of the Department of Health and Social Security.

3. The claimant is a 27 year old labourer who last worked in March 1978. From that date until July 1980 he claimed and received sickness benefit, followed by invalidity benefit, in reliance upon medical statements issued by his doctor advising him to refrain from work upon diagnoses of "cervical spondylosis" and "cervical spondylitis". From the findings of examinations by various regional medical officers of the Scottish Home and Health Department, however, it is apparent that the claimant also lost any useful sight in his right eye many years ago, has had a past history of drug and alcohol abuse, and suffers from a degree of personality disorder. He was considered incapable of work by regional medical officers who examined him in 1979. Two different officers however, reporting on 19 June 1980 and 28 July 1980 respectively, expressed the opinion that the claimant was by those dates fit for work as a labourer. The insurance officer disallowed a claim for invalidity benefit from 31 July 1980 to 13 August 1980 made in reliance upon a further medical statement by the claimant's doctor and, upon the claimant's appeal, referred to the local tribunal the question of the claimant's entitlement to benefit in the further period from 14 August 1980 to 27 August 1980 for which the claimant also claimed benefit.

4. On 23 September 1980 the local tribunal, proceeding with the claimant's appeal in his absence, unanimously refused his appeal and disallowed invalidity benefit for the whole period now under appeal. The claimant appealed to the Commissioner. The effect of our decision upon the procedural issues dealt with hereafter is that the claimant's appeal to the Commissioner must be adjudicated upon by us and it is convenient to deal with that matter first. In addition to the medical evidence already referred to, there has been produced a medical certificate from the claimant's doctor dated 16 September 1980 in which the opinion is expressed that the claimant is unfit for work. There is also a further report from another medical officer dated 26 November 1980 which reviews the claimant's condition in some detail and concludes that the claimant is fit for work. Having considered the medical evidence and the claimant's evidence and representations thereon we have come to the conclusion that it is not established upon the balance of probability that the claimant was incapable of work in the period under appeal. He cannot be deemed to be so incapable under the relevant regulations in the circumstances of this case and is accordingly not entitled to invalidity benefit in the period under appeal. His appeal against the decision of the local tribunal dated 23 September 1980 therefore fails.

5. The claimant had indicated on form LT 6 prior to the local tribunal hearing that he intended to be present and represented at the hearing on 23 September 1980. In the event he was not present or represented and the local tribunal proceeded, as they were entitled to do, to determine the appeal in his absence. On 25 September 1980 the claimant lodged an appeal to the Commissioner on form LT 43 in which he stated:—

> "I am appealing against the tribunals decision on the grounds that: I have a letter from my G.P. stating that I am unfit for work, I also took a turn on the day my appeal was heard which was why I could not appear personally, I had to get the doctor out to my house."