

LB/HR
COMMISSIONERS DECISION
PERMANENT RECORD
COPIES NOT TO BE REMOVED

Commissioner's File: CS/025/1986

C A O File: AO 4637/NV/85

Region: London North

SOCIAL SECURITY ACTS 1975 TO 1986

CLAIM FOR NON-CONTRIBUTORY INVALIDITY BENEFIT

DECISION OF THE CHIEF SOCIAL SECURITY COMMISSIONER

Name:

Appeal Tribunal:

Case No:

[ORAL HEARING]

1. My decision is that:-

1. The claimant is entitled to non-contributory invalidity pension for the period 14 May 1984 to 28 November 1984 (both dates included).
2. The claimant is entitled to severe disablement allowance for the period 29 November 1984 to the date of this decision and for twenty-six weeks thereafter.

I allow the appeal of the claimant accordingly from the decision of the social security appeal tribunal given on 11 June 1985. I do not regard it as appropriate to give a further decision as to future entitlement beyond that which I have given.

2. I held an oral hearing of this appeal at which the claimant was represented by Mr. Adam Griffith of the Hackney Law Centre and the adjudication officer by Mr. James Latter of Counsel. I am indebted to them both for their submissions. The claimant gave evidence at the oral hearing. I subsequently directed and received further written submissions from the parties; it was not necessary for me to hold a further oral hearing.

3. It was common ground before me that the claimant was incapable of work and that her entitlement to non-contributory invalidity pension depended upon regulation 13A (1) and (2) of the Social Security (Non-Contributory Invalidity Pension) Regulations 1975 as amended (since repealed), which ran as follows:-

"13A. -

- (1) A woman shall not be treated as incapable of performing normal household

duties unless she is so incapable by reason of some specific disease or bodily or mental disablement.

- (2) A woman shall be treated as incapable of performing normal household duties if, without substantial assistance from or supervision by another person, she cannot or cannot reasonably be expected to perform such duties to any substantial extent, but she shall not be treated as so incapable if, without such assistance or supervision, she can or can reasonably be expected to perform such duties to any substantial extent."

I add at this point that the requirement of being incapable of performing normal household duties was one contained in section 36(2) of the Social Security Act 1975 (since replaced) where (as in the present case) a woman is married and residing with her husband.

4. In the present case there is no doubt that the claimant's disability is as a result of bodily disablement so that regulation 13A(1) is satisfied. The issue is as to whether regulation 13A(2) is satisfied. That provision has been considered by the Court of Appeal in an unreported decision given on 23 November 1984, Stevens v. Johnson. In that case Dillon LJ at p.19C said of regulation 13A(2) this:-

"What is plain, as it seems to me, is that the sub-rule must be regarded as a whole, posing essentially one question as to the capacity of the woman whose case is in question. It is not right to consider the first part of the subsection without regard to the latter part, or vice versa and that indicates that the words "to any substantial extent" must be read fairly broadly".

5. It is necessary to have regard to the situation of the claimant as a whole and in the round - per Bridge LJ in the same case at p.4F. It is also settled that it is the claimant's capacity in her own circumstances which has to be considered - Commissioner's Decision R(S)5/78 at paragraph 14. In Decision R(S)6/79 at paragraph 11 the then Chief Commissioner said this:-

"Where normal household duties are concerned it seems to me that a housewife's prime requirement is mobility, and an impaired mobility greatly reduces the tasks which a housewife normally performs; it strikes at the roots of efficiency and capacity for normal household duties, the main feature of which is, I think, a capacity for sustained exertion,".

It is also clear that there are two separate questions the first as to whether a claimant can without substantial assistance or supervision from another person perform normal household duties to any substantial extent and the second whether she can without such assistance or supervision be reasonably expected to perform normal household duties to any substantial extent - per the later case at paragraph 10.

6. I turn to the facts. The claimant was at the material time a married woman living with her husband. She was born on 31 August 1936 and was thus aged during the material period 48/49 years. She last did paid work in about 1974 and in the report of a medical examination on 13 January 1983 the doctor stated that the claimant was incapable of work at her occupation of hospital orderly and that there was no need to refer again for 24 months. He said this also:-

"Very crippled following spinal injury ten years ago - hospital unable to achieve improvement. Outlook of invalidism seems likely".

7. The claimant had a further medical examination on 11 July 1984. The diagnosis was of chronic backache with wedging L.1., and the doctor stated:-

"Due to persistent pain in the back - she has severe handicap to do household work".

In the degrees of function relating to various household tasks the doctor classified the degree of function as normal in relation to lifting (as in preparing and cooking a meal), carrying (as in preparing and cooking a meal), manipulative ability (as in turning taps, opening jars and cleaning vegetables), planning (as in organising shopping or arranging daily routine) and communication (as in dealing with tradesmen or shopping). He ascribed a substantial degree of function to standing (including function of balance, as when ironing, using a vacuum cleaner or queuing), walking within the home, (moving from room to room, negotiating steps and uneven levels as in cleaning, while pushing a vacuum cleaner or sweeping), walking outside the home (as when going to shops) and climbing stairs. He ascribed only a slight degree of function to lifting (as in doing washing, getting shopping), carrying (as in doing washing and getting shopping), reaching out and up (as in reaching shelves and into cupboards or making beds), and sustained action (as in cleaning windows or oven, ironing). He described the degree of function as "none" in bending (as in reaching into oven, cleaning bath or making beds) and kneeling (as in cleaning floors or bath).

8. In a report dated 8 January 1985 (just after the material period but I am satisfied relevant to it) a consultant orthopaedic surgeon wrote of the claimant -

"This lady has a long history of thoraco-lumbar pain due to degenerative change and certain of her activities of daily living are interfered with thereby".

9. As I have said, the claimant gave evidence before me. She did this principally by reference to a questionnaire prepared by the Disability Alliance. So far as shopping is concerned I conclude that she had only a limited capacity to carry shopping and that her evidence supports the medical findings as to the degree of function (slight). I accept her evidence that she cannot reach up to higher cupboards nor bend down low; she cannot for example get a joint out of the back of the refrigerator but she can get small items out. She can lift small packets of cereals but not big packets of soap powder for the washing machine. She can open tins and bottles and jars but not if they are large ones. She can do vegetable preparation and cut up meat and so forth if sitting down but cannot roll out pastry because that needs her to stand and it needs too much strength in her hands. She has a limited time capacity for standing at the sink and a limited capacity for carrying washed vegetables from the sink to the table. A saucepan filled with water at the sink is too heavy for her to carry to the stove. She cannot put a roast in and out of the oven.

10. It is not I think necessary for me to review the evidence in detail because in my judgment it can be summarised that while the household job to be done is on a level and not involving lifting or bending or significant manipulative strength or carrying then the claimant can do it. However, those household tasks which require lifting or bending (such as making beds or ironing), or standing for other than short periods, or assembling pots, pans and food by reaching or lifting then she cannot perform them without assistance. On one occasion she dropped the dinner because of her incapacity. This appears to me to be wholly consistent.

11. In my judgment, taking a rounded view of the claimant's capacity to perform normal household duties she has satisfied the requirements of regulation 13A(2) as to both questions.

12. The parties have accepted (and rightly) that upon my finding as to the claimant's entitlement to housewives non-contributory invalidity pension she was entitled to a severe disablement allowance (which replaced it) as I have found above. I am satisfied that this is right, by virtue of regulation 20(1)(2) of the Social Security (Severe Disablement Allowance) Regulations 1984 [SI 1984 No. 1303]. In so finding I have followed decision CS/391/83 in

preference to decision CS/193/84. I do not however consider that I should make any decision as to entitlement to severe disablement allowance outside the period which I have specified.

13. My decision is as in paragraph 1 above.

(Signed) Leonard Bromley
Chief Commissioner

Date: 22 January, 1987