

CS 308/83

**COMMISSIONERS DECISION
RECORD
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VGHH/SH

SOCIAL SECURITY ACTS 1975 TO 1982

CLAIM FOR NON-CONTRIBUTORY INVALIDITY PENSION

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Local Tribunal:

Case No:

1. This appeal succeeds. My decision is that non-contributory pension is payable in respect of the claim made on 2 August 1982 from 2 August 1982.

2. The sole issue in this appeal is whether non-contributory invalidity pension should be paid from 24 February 1983, the date specified by the local tribunal in their corrected decision, or from 2 August 1982 the date from which benefit is claimed.

3. The claimant, who was born on 17 March 1947 and has suffered from epilepsy since birth, was in receipt of non-contributory invalidity pension for married women up to and including 16 February 1982. On 10 February 1982 she was seen by an examining medical officer of the Department of Health and Social Security who expressed the opinion that she was not incapable of work with Remploi. In his opinion her epilepsy was well controlled - her last major fit was a year earlier. She was a spastic with weakness of her right arm and leg. She had seen the DRO with a view to returning to Remploi. A general practitioner (not the one who normally attended her) in the medical practice that the claimant attended then issued a statement that the claimant need not refrain from work and benefit was paid up to and including 16 February 1982. From 17 February 1982 to 12 May 1982 the claimant signed unemployed. She was not entitled to unemployment benefit but this was a condition for receiving supplementary benefit. From 17 May 1982 to 2 July 1982 she attended a rehabilitation course with the Manpower Services Commission having seen the disablement resettlement officer with a view to returning to employment at Remploi. She received an allowance while attending the course. From 3 July 1982 to 11 August 1982 she again registered for employment. She was registered as a disabled person for light general work/cleaning (Epileptic).

4. On 24 July 1982 the claimant remarried. On cessation of her supplementary benefit the claimant claimed non-contributory invalidity pension (on 2 August 1982). Her claim was disallowed by an insurance officer on the basis that she had not proved incapacity for work.

The local tribunal heard evidence from the claimant together with a letter from her own doctor. The claimant told them herself about the nature of her condition and how she had been taken ill at work when she was a cleaner in a pub; she had to leave the pub at once because of her illness. The claimant then gave them details of her recent attacks - she had had a fit only the previous night. The tribunal unanimously decided that non-contributory invalidity pension was payable in respect of the claim made on 2 August 1982 giving as their reasons: "We have absolutely no hesitation in allowing this appeal. We thought the evidence was overwhelmingly in the claimant's favour".

5. The HNCIP unit to whom the appeal papers were sent directed that the chairman be asked to state the date from which HNCIP was payable in the record of the tribunal decision and a correction was issued to the decision stating that it was payable from 24 February 1983. The claimant's complaint (through her representatives) is that the benefit should have been awarded from 2 August 1982, the commencement date stated in her claim, and not from 24 February 1983 and that her representative never had the opportunity of calling witnesses to support this part of her case.

6. The evidence of the claimant's own doctor, Dr. M... is clear and straightforward. He completed the medical report on form HA45, after examining the claimant. He diagnosed the claimant as suffering from Right Hemiparesis Epilepsy. The main disorder restricting her ability to perform her normal household duties or undertake paid employment were virtual paralysis of right hand and arm and frequent epileptic fits. Another relevant disorder was right sided spasticity. She suffered from right sided weakness and loss of dexterity, was unable to walk very far and wore a caliper on her right leg. In his opinion the claimant was incapable of paid work, whether part-time or full-time. In assessing her functions in 13 listed activities connected with normal household duties, he found that her degree of function was normal only in planning as in organising shopping or arranging daily routine and in communication as in dealing with tradesmen or shopping. In nine of the listed functions her degree of function was slight and these included the fundamental function of sustained action and of manipulative ability as well as capacity to lift, carry, reach out and up and kneel. The doctor noted in addition that generalised muscular weakness was a problem and also the liability to suffer a fit. In his opinion his description of the claimant as set out above, applied to her for the entire period from 18 January 1982 (that is to say, for the 196 day qualifying period before the date which the claimant had had specified as the commencing date for her claim). On 21 February 1983 Dr M supported the appeal of the claimant stating that at the present moment her epilepsy was not well controlled and she was attending Manchester Royal infirmary for this reason. She had a spastic right hand and arm which affected her considerably and that she needed to be accompanied whenever she went out as she had a tendency to fits in the streets or on public transport.

7. The claimant last worked in 1962, apparently with Remploy, since this is given as her occupation on the form RM9 completed by the medical officer of the Department.

8. The essential question for decision is whether the claimant was incapable of work, which means work in terms of section 17(1)(a)(ii) of the Social Security Act 1975 (see section 36(1) of that Act and the Social Security (Non-Contributory Invalidity Pensions) Regulations 1975) from 18 January 1982 until 11 August 1982. It was originally submitted to the local tribunal that she was not incapable from 17 February 1982 until 11 August 1982 because she was registering at the Job Centre until 11 August 1982. I do not consider the fact that she was so registering carries much weight in the particular circumstances. By registering and declaring herself available for employment she was able to obtain supplementary benefit. The question that I have to decide, however, is whether the claimant was incapable of work that she could reasonably be expected to do and for which an employer would pay. The medical officer who examined the claimant was considering the claimant's capacity for work by referring to Remploy and her discussion with the rehabilitation officer, and the doctor who advised that the claimant need not refrain from work must all have had Remploy in mind. Remploy employs severely disabled people and has been judicially held to represent sheltered employment of an exceptional character: see Commissioner's decision R(I)6/77 at paragraph 7. In my judgment, in deciding whether a claimant has proved incapacity for work in terms of section 17(1)(a)(ii) of the Social Security Act 1975 the fact that a doctor has expressed the opinion that she is capable of work at Remploy is of minimal weight. If this were not so, it would be virtually impossible for those suffering from severe physical disability ever to prove incapacity for work, because this exceptional employer pays for work that an ordinary employer would not. If I am wrong in this, it is necessary to choose between conflicting medical evidence. A doctor's opinion is not conclusive. In my judgment, the very detailed report of the claimant's own doctor ought to be accepted in its entirety and I prefer this detailed assessment to the other medical evidence. The claimant has throughout, ever since 18 January 1982, suffered from generalised weakness. Her capacity for sustained action of any description is slight. She has only slight powers of manipulation. She is liable to fits at work or in the street. No doubt, as the RMO found, the claimant had not had a major fit for over one year at the time when the claimant was examined. But in considering whether there is work for which any employer would pay, and of which the claimant was capable, minor fits (from which the claimant clearly suffered, on the evidence, more frequently) are relevant. Work that is capable of being carried out by someone suffering from general weakness and is interrupted by fits and which cannot be the subject of any sustained action by a claimant who clearly has no special qualifications is not work for which any employer in terms of section 17(1)(a)(ii) would pay.

9. For the above reasons, incapacity for work in terms of section 17(1)(a)(ii) of the Social Security Act 1975 has in my judgment been proved continuously from 18 January 1982. As regards normal household duties, the only evidence is that of the claimant's own doctor, which I accept. This stretches right back to 18 January 1982. The

adjudication officer now concerned very properly submits that it is for consideration that incapacity for normal household duties has been proved from 17 February 1982. I have no doubt at all that it has. The claimant clearly cannot carry out sustained tasks and with her generalised weakness and incapacity for sustained action I consider that she would be able to achieve and complete only minimal household duties and that what she could in fact do is not - and has not since 18 January 1982 been - substantial in any sense.

10. The appeal accordingly succeeds. My decision is set out in paragraph 1.

(Signed) V G H Hallett
Commissioner

Date: 26 July 1984

Commissioner's File: CS/308/1983
C I O File: I.O. 3444/NV/83
Region: North Fylde Central Office