

WIDOW'S BENEFIT

Cohabitation—relationship claimed to be that of landlady and lodger

The claimant became a widow on 2nd August 1968 and was awarded widowed mother's allowance with increases for seven children from 4th February 1969. Information was received to the effect that a man called S. had left his wife and gone to live with the claimant in October 1969. On 10.7.70 she gave birth to a child of whom S. was admittedly the father. The house had three bedrooms and she had a family of four girls and three boys to accommodate as well as herself. It was the intention of S. and the claimant to marry when S.'s wife divorced him. The claimant looked to him as the person to look after and control the children. She usually spent her leisure time with him and the family watching television. He sometimes helped with the domestic tasks and if the claimant could get someone in to look after the children, they went out together. At first, S. paid the claimant nothing. Later he paid £5 a week plus, as a rule, £1.50 or £2 for his child

Held that:—

1. In considering the question of cohabitation during a certain period, the relationship of the parties at an earlier period, and the circumstances in which that relationship arose, may be looked at in order to throw light on their relationship during the period at issue (paragraph 3);
2. whether a woman is cohabiting with a man as his wife, within the meaning of the statute, requires an examination of three main areas of their relationship: (1) sexual, (2) financial and (3) general, and although all three are as a rule relevant, no single one is necessarily conclusive (paragraph 5);
3. in view of S.'s admitted paternity of the child born to the claimant on 10th July 1970, it was evident that sexual intercourse took place (paragraph 4);
4. the fact that there was sexual intercourse at about the time when S. came to live at the claimant's address, and that he continued to live there and to associate with the claimant in the manner described below goes a very long way to establishing "cohabitation" within the meaning of the Act (paragraph 6);
5. as a rule, husbands maintain their households to the extent that they think they can reasonably afford; such was the basis of S.'s contributions which, when contrasted with the, normally, commercially determined basis of a lodger's payments, showed the financial relationship between the claimant and S. was much more indicative of that of husband and wife than that of landlady and lodger (paragraph 7);
6. the facts that S. slept and ate at the claimant's house, cared for the children, helped with domestic chores, spent his leisure with her and intended to marry her when he was free to do so showed a behaviour far more like that of a husband than of a lodger (paragraph 8);
7. the natural and compelling inference from the admitted facts and circumstances is that the claimant was cohabiting with S. as his wife and widowed mother's allowance was accordingly not payable (paragraph 9);
8. repayment of the overpaid benefit was required because the claimant's false representations that she was not cohabiting, by which she had obtained the money, were inconsistent with due care and diligence (paragraph 10)

1. My decision is (1) that the insurance officer's decision awarding widowed mother's allowance from 4th February 1969 is subject to review in terms of section 72(1)(b) of the National Insurance Act 1965; (2) that, on review, widowed mother's allowance is not payable from 14th July 1970 to 2nd November 1970 (both dates included), on the ground that throughout that period the claimant was cohabiting with a man as his wife, in terms of the proviso to section 27(3) of the same Act; (3) that there has been an overpayment of benefit by way of widowed mother's allowance in respect of the said period, amounting to £236 16s. (£236.80); and (4) that repayment of the said sum is required, in terms of section 81 of the same Act.

2. The claimant became a widow on 2nd August 1968 and being the mother of eight children she was in due course awarded widowed mother's allowance. From 4th February 1969 she was awarded the allowance with increases for seven children. In October 1969 the local insurance officer received information to the effect that a man called S. had left his wife and gone to live with the claimant. This information, if true, entitled the insurance officer to review his decision awarding benefit, in terms of section 72(1)(b) of the Act: and to revise it, so as to make benefit not payable for any period during which the claimant was "cohabiting with a man as his wife". After prolonged inquiries, the insurance officer on 10th November 1970 reviewed his decision awarding widowed mother's allowance and decided that from 14th July 1970 benefit was not payable, because the claimant was cohabiting with a man as his wife. The claimant had in fact been paid widowed mother's allowance for the sixteen weeks from 14th July 1970 to 2nd November 1970, amounting to £236 16s. The insurance officer required repayment of that sum. I understand that no benefit was paid beyond 2nd November 1970, the claimant's current order book having been impounded. The claimant appealed to the local tribunal and appeared in person at their hearing, denying that she had cohabited with a man as his wife within the meaning of the Act. The tribunal unanimously rejected her appeal. She then appealed to the Commissioner. She and the man S. attended and gave evidence at the oral hearing.

3. The controversy in this appeal is whether it is shown that during the period 14th July to 2nd November 1970 the claimant was cohabiting with S. as his wife. It seems to me plain that the present appeal is effectively concerned only with that period. This does not mean, of course, that the relationship of the parties at an earlier period, and the circumstances in which that relationship arose, may not be looked at in order to throw light upon their relationship during the period dealt with in the decision.

4. It is clear, from admissions made by the claimant on interview by the Department's inspector, that S. left his wife and came to live at the claimant's address in October 1969. The claimant said he was there as a lodger: that he only slept there, and got no meals, and paid nothing. At the hearing before me the claimant agreed that she had never had a lodger before (apart from a relation who had once made a short stay). She was not, one would have thought, in a position to take in a lodger. Her house had three bedrooms. She had a family of four girls and three boys to accommodate, as well as herself. The claimant said S. slept on a couch in the living room. Whether one accepts the claimant's evidence as to the sleeping arrangements or not, it is obvious that sexual intercourse took place between the claimant and S.; because on 10th July 1970 the claimant gave birth to a child of which S. was admittedly the father. For a time before the birth, S. was away from the claimant's house, but shortly after the birth he returned there. The claimant told the inspector that he "was now residing as a boarder paying £5 per week for full board and lodgings", and also gave her "either £1 10s. 0d. or £2 per week towards the maintenance of child Elizabeth of whom he is the father". It should be added that both the claimant and S. have stated that they intend to be married when S.'s wife divorces him.

5. It is generally accepted that the question whether a woman is cohabiting with a man as his wife, within the meaning of the statute, requires an examination of three main matters: (1) their relationship in relation to sex: (2) their relationship in relation to money: and (3) their general relationship. Although all three are as a rule relevant, no single one of them is necessarily conclusive.

6. The claimant asserts that the birth of the child Elizabeth, of whom S. was the father, resulted from an isolated act of intercourse. This may be thought improbable, in view of the fact that the overt association between her and S. continued, apparently unchanged, after that admitted act took place. But there is no need to speculate on the extent to which intercourse took place. The fact that there was sexual intercourse, which must have taken place just about the time when S. came to live at the claimant's address, and that he thereafter continued to live at that address and to associate with the claimant in the manner hereafter to be described, goes a very long way, in my view, to establishing "cohabitation" within the meaning of the Act.

7. The claimant strongly contends that she was not cohabiting with S. because he was not maintaining the household as a husband does. In relying so strongly on this matter, the claimant in my view unduly stresses only one aspect of the situation: whereas the situation must be considered in a number of aspects. There are great variations in the way husbands maintain their households. In some cases they do not maintain them at all. If there is any generalisation that can be ventured, it is probably that as a rule husbands maintain their households to the extent that they—with or without consultation with their wives—consider they can reasonably afford. This was very much the basis of S.'s contributions in the present case. To start with, he paid nothing; because apparently he satisfied the claimant that in view of his obligations to his own wife he could not afford anything. Later he paid £5 a week, plus (as a rule) some 30s. or 40s. a week; the fact that the 30s. or 40s. was not always paid indicates that what he paid was being represented as the limit which he could afford. This is not indicative of the status of a lodger. What a lodger pays is generally determined on a commercial basis, as a reasonable counterpart to what he is to receive by way of accommodation, meals and services. A person who cannot afford to pay the stipulated charge does not become a lodger. If on the other hand he has ample means and could well afford to pay more, that is no concern of the landlady; it does not determine what the charge is to be. On the admissions of the claimant and S., their financial relationship was much more indicative of that of husband and wife than that of landlady and lodger.

8. Then there was their general relationship. S. not only slept at the claimant's address, and (during the period dealt with in this decision) had his meals there. She thought of him as the man she was to marry as soon as he was free to marry. When he came back to stay with her after the birth of the child Elizabeth, he did so at her request because "there was nobody else she could think of who could look after and control the children" (i.e. *her* children, not simply *his* child Elizabeth). She usually spent her leisure time with S. and the family watching television. S. sometimes helped with domestic tasks, like washing the dishes. If she could get someone in to look after the children she and S. "had a night out". Although I quite understand that in certain circumstances a good-natured lodger might do some of the things that S. did, the general picture is far more like the behaviour of a husband than that of a lodger.

9. The foregoing description of the apparent relationship between the claimant and S. is based mainly on their own contemporaneous evidence given in statements to the Department's inspector. At the hearing before me, both gave additional evidence: but this did not, in my view, materially detract from their earlier statements. The claimant's main concern was to argue that it was not right to infer from the admitted facts and circumstances that she was cohabiting with S. as his wife, within the meaning of the statute.

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I am, however, quite satisfied that the natural and indeed compelling inference from the admitted facts and circumstances is that, during the period with which this decision is concerned, the claimant was cohabiting with a man (S.) as his wife. Widowed mother's allowance was therefore not payable for that period.

10. Repayment of the benefit overpaid—£236 16s. (£236.80)—*must* be required in terms of section 81 of the Act, unless I am satisfied that the claimant used due care and diligence to avoid the overpayment. She obtained the money by representing—as I hold, falsely—that she was not cohabiting with S. This was not consistent with due care and diligence to avoid overpayment. Repayment must therefore be required. I agree with the unanimous decision of the local tribunal.

11. The appeal of the claimant is not allowed.

(Signed) H. A. Shewan
Commissioner.
