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SOCIAL SECURITY ACTS 1975 TO 1980

CLAIM FOR NON-CONTRIBUTORY INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Josephine Yvonne Dingwall (Mrs)

Local Tribunal: Sunderland

Case No. 64/3

ORAL HEARING

1. This is an insurance officer's appeal from the decision of the local tribunal dated 26 October 1979 allowing the claimant's appeal from the decision of the original insurance officer dated 4 October 1977. My decision is that non-contributory invalidity pension is payable to the claimant from 13 September 1978 because the claimant has proved that she was incapable of performing normal household duties by reason of some specific disease or bodily or mental disablement: Social Security Act 1975, section 36(2) and (7) and Social Security (Non-Contributory Pension) Regulations 1975, regulation 13A as amended by regulation 2 of the Social Security (Non-Contributory Invalidity Pension) Amendment Regulations 1978. Accordingly the insurance officer's appeal is dismissed.

2. On 21 July 1980 I held an oral hearing. Mr P.G. Phippard of the Chief Insurance Officer's Office appeared for the insurance officer. He called no oral evidence. The claimant was represented by Mr J. Douglas, solicitor of the Child Poverty Action Group. The claimant gave evidence.

3. The claimant is a married woman now 36 years of age, whose household includes her husband and a daughter aged 5. In her claim form the claimant describes her activities. She says that she suffers from the after effect of polio exacerbated by the presence of osteo-arthritis.

4. I have seen the claimant and I have seen her attempt to move. The description used of her by Mr R.G. Checketts a consultant orthopaedic surgeon as "significantly disabled and handicapped" seems to me to be somewhat of an understatement. The claimant contracted poliomyelitis at an early age and it caused paralysis of her left lower limb. She has undergone various operations to correct deformities. She has been obliged to wear a calliper on her left leg for many years. She also has to wear surgical shoes. In order to walk she must use a stick in her right hand. Her walking is difficult but she can cover distances of some 300 yards. Clinically her left ankle is unstable but the whole position is exacerbated considerably by the presence of osteoarthritic changes in the joint. The claimant says, and I accept it without

reservation, that she is constantly in pain from her ankle and that she has to take pain killing tablets daily. Her normal daily dosage is some 6 tablets but this figure is frequently exceeded in times of acute pain. To make matters infinitely worse the claimant suffers severe menstrual problems each month. These have a double effect. Physically they make the claimant feel very ill and mentally they make her feel depressed and unhappy. During these periods, the claimant told me, and I readily accept, that she was totally incapable of any form of household work.

5. In this case the insurance officer accepted that the local tribunal was correct in awarding the claimant non-contributory invalidity pension for the period 17 November 1977 to 12 September 1978. Pension is therefore payable for that period. The sole question in the appeal was whether the claimant was entitled to non-contributory pension from 13 September 1978. It follows therefore that the law which is applicable in this case is that contained in section 36(1), (2) and (7) of the Social Security Act 1975 and the Social Security (Non-Contributory Invalidity Pension) Regulations 1975 as amended with effect from 13 September 1978 by the Social Security (Non-Contributory Invalidity Pensions) Amendment Regulation 1978.

6. As from 13 September 1978, regulation 13A(2) came into effect. This now provides "(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."

7. The amended regulation was considered by the present Chief Commissioner in Decision R(S) 6/79. He came to the conclusion that the effect of regulation 13A as amended was to provide for a set of circumstances in which a woman should be treated as incapable of performing normal household duties and another set of circumstances in which she should not be so treated. To that extent the regulation excluded any independent operation of section 36(2) of the Act. The normal household duties must be considered to ascertain those which a claimant could perform. Those duties whether or not perfectly performed became the test of her capacity to perform normal household duties "to any substantial extent." Two questions arise -

- (i) Could the claimant without substantial assistance or supervision from another person perform household duties to any substantial extent?: or
- (ii) Could she without such assistance or supervision be reasonably expected to perform household duties to any substantial extent?

A negative answer to the first question results in the claimant being treated as incapable of normal household duties. A positive answer raises the second question. If the answer to that question is positive, the claim will be defeated; if negative the claim will succeed.

8. Apart from the evidence of the claimant I have before me a medical report from Dr Montgomery dated 28 September 1977, a medical report from Mr Checketts dated 16 July 1979 read together with 2 letters from him dated 25 February 1980 and 25 March 1980. In addition to that I have before me a report of Mrs Raun a physio-therapist with the Sunderland Area Health Authority. This report is particularly valuable because it was compiled after Mrs Raun had seen the claimant at work in her own home.

9. Clearly the claimant's most serious disability is her inability to move freely about within the house or outside the house. Although she can walk she does so with extreme difficulty with the aid of a stick. This means that in practice she is virtually to be regarded as a one-handed person. She always needs her right hand in order to enable herself to keep her balance.

10. The fact that her mobility is so severely impaired strikes at the root of efficiency and capacity for normal household duties. It also follows that the claimant's capacity for any sustained exertion is enormously impaired.

11. Although the claimant's beds are supplied with a light cover the claimant can only make up a bed after spending an inordinate amount of time in doing so. As for cleaning she is unable to use a vacuum cleaner mainly because the switches and plugs are at ground level, and the claimant finds it difficult to insert the plug into a socket at that level. She can use the vacuum cleaner in the passage way where the plug is placed at a convenient height on the wall; she cannot pull the vacuum cleaner out of its cupboard. She readily admits that she can dust with one hand but her ability to do so with any degree of efficiency is limited by her ability to move about. Moreover, any substantial exertion brings on the osteoarthritic pain and requires the taking of yet more pain killing tablets.

12. The family wash is beyond her capabilities although she has a washing machine. She is able to sort the family washing into piles but she is unable to load the machine or to unload it or to put the washed clothes into a spin drier. These duties have to be undertaken by her husband. Moreover, because of her lack of mobility and stability she cannot peg out the washed clothes or retrieve the dried clothes from the clothes line.

13. Cooking presents enormous problems. As in a large number of households the claimant's household makes do with one main meal a day, the timing of which depends upon the shift that her husband is working. The claimant can to a limited extent clean vegetables which she does in a seated position on the floor. She cannot cook on her own and she gave instances of a number of accidents that had occurred when she had so tried. As a matter of common sense and safety the cooking of the main meal takes place when the husband is present. However, the claimant can boil a kettle to make a cup of tea.

14. The claimant can sew but is quite unable to get out her sewing machine because of its weight. She can knit in her own time.

15. Shopping presents particular problems. She can in fact with difficulty walk to the local shop which is some 300 yards away. When she does that she makes the journey in 2 stages. She walks first of all to a cafe, where she takes a rest. Then she walks to the shop and decides on her purchases. She is unable to carry her purchases. She is therefore dependent upon the goodwill of a neighbour to carry those purchases back. Normally her husband helps in this respect.

16. I accept that the claimant can slowly lay the table and do various secondary items of housekeeping. Her condition as she describes it to me is in fact in my judgment worse than the condition described by Dr Montgomerie. He describes her ability to bend as for example to reach an oven as substantially impaired as also is her ability to stand, for example whilst ironing or to kneel on the floor or for any form of sustained exertion. Indeed, according to Dr Montgomerie the only function of the claimant which is not impaired is her ability to plan and to communicate.

17. I have considered all the evidence in this case. I accept the claimant's own account of her inabilities. These are consistent with the observations of Mrs Raun and of Dr Montgomerie. They are also consistent with the general tenor of Mr Checkett's medical report and subsequent letters.

18. Turning now to the questions set out by the Chief Commissioner in decision R(S) 6/79. I am satisfied that there are some household duties which the claimant can perform. But taking the entirety of the evidence I am satisfied that that which the claimant can in fact perform is a very small part of those duties which a housewife would normally perform. I come therefore to the conclusion that what the claimant can in fact perform is not in any way substantial. I answer the first question 'NO'. It therefore follows that this results in the claimant being treated as incapable of normal household duties. I come therefore to the conclusion that the claimant is entitled to non-contributory invalidity pension from 13 September 1978. Accordingly, the insurance officer's appeal is dismissed.

(Signed) I O Griffiths
Commissioner

Date: 21 August 1980

Commissioner's File: C.S. 32/1980
C I O File: I.O. 2414/NV/79
Region: HNC1P Unit NFCO