

JA/JA/JC/~~J~~/RS.

CS 101/1979

BJAT/BOS

SOCIAL SECURITY ACTS 1975 TO 1979

CLAIM FOR NON-CONTRIBUTORY INVALIDITY BENEFIT

DECISION OF THE NATIONAL INSURANCE COMMISSIONER

Case No: 67/3

Decision CS.6/79 TO BE REPORTED AS RS 7/79.

1. This is an appeal by an insurance officer who contends that in so far as a decision of a local tribunal by a majority held that the claimant was entitled to non-contributory invalidity pension from 13 September 1978, such decision was erroneous. The contention is based on the effect of the Social Security (Non-Contributory Invalidity Pension) Amendment Regulations 1978 [S.I. 1978 No 1340] in force from 13 September 1978, regulation 2 providing:-

"(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."

2. The effect of the regulations is to provide for a set of circumstances in which a woman shall be treated as incapable of performing normal household duties and another set of circumstances in which she shall not be so treated. To this extent, in my opinion, it excludes any independent operation of section 36(2) of the Social Security Act 1975, which, together with the regulation, provides for the benefit.

3. The questions raised by the regulation for consideration are:-
(1) can the claimant without substantial assistance or supervision from another person perform normal household duties to any substantial extent? or (2) can she without such assistance or supervision be reasonably expected to perform normal household duties to any substantial extent? A negative answer to question (1) results in her being treated as incapable of normal household duties. A positive answer raises question (2). If the answer to this question is positive, the claim will fail; if negative, it will succeed.

4. The questions are to be answered after enquiry to ascertain what household duties the claimant can perform, and these duties, whether or not perfectly performed, become the test to determine her capacity to perform normal household duties, "to any substantial extent".

5. The main disablement from which the claimant, who is about 37 years of age, now suffers, is exhaustion after any exertion. It arises from a mitral valve replacement some years ago. The claimant also complains of leg pains, and was under psychiatric care in the past. She is, however, described as mentally alert, and as showing no signs of confusion. She rests a good deal on advice from her doctor, and is assisted in the home by her husband, son and daughter, and has a home-help twice a week for 2 hours.

6. The medical evidence describes her as able to do most things which do not require a considerable amount of exertion, and her function for sustained exertion is graded as substantially impaired. The other functions required for household duties, lifting and carrying, reaching up and out, bending, balancing, kneeling, walking, climbing stairs, manipulative ability, planning and communicating are not graded by her doctor as being any more than slightly impaired.

7. The claimant and a social worker gave evidence to the local tribunal. The claimant has since supplemented her evidence with a list of the housework she can and cannot do, and the housework she can do, as described by her, is limited shopping locally for light articles, standing for a limited time at the sink or in the kitchen to peel vegetables, open tins or make tea, and put washing in the automatic washing machine.

8. The claimant relies upon the fact that she has a home-help twice a week to support her case that she is unable to perform normal household duties to any substantial extent. Home-helps are provided by local social services authorities pursuant to the National Health Service Act 1977, Schedule 8, paragraph 3, providing that:-

"It is the duty of every local social services authority to provide on such a scale as is adequate for the needs of their area, or to arrange for the provision on such a scale as is so adequate of home-helps for households where such help is required owing to the presence of -

- (a) a person who is suffering from illness, lying in, an expectant mother, aged, handicapped as a result of having suffered from illness or by congenital deformity

9. The fact that the claimant has a home-help does not of itself establish that without substantial assistance from or supervision by another person she cannot or cannot reasonably be expected to perform normal household duties to any substantial extent. It is evidence that some household help is considered to be required, and is received.

The extent to which a home-help either wholly relieves the claimant of some of the duties arising from her household circumstances or shares in any particular household task is a factor to be taken into account, together with any other assistance received, in considering the question to what extent, without substantial assistance, the claimant can or can reasonably be expected to perform normal household duties. Not all assistance is substantial, and what a claimant can do or can reasonably be expected to do in her particular circumstances depends upon the effects of her disabilities, although the fact that she is assisted in or relieved of some of the household duties she would normally be expected to do herself may, but does not necessarily, lead to the conclusion that assistance is given because she cannot perform those duties.

10. The majority of the local tribunal found that the claimant could not perform normal household duties to any substantial extent; the chairman dissented. It is unfortunate that there are not specific findings of fact of what precise household duties the claimant can do.

11. I appreciate that the claimant's case was that the medical evidence was unsatisfactory, but it is to be noted that the doctor twice stated that the claimant can do most of the things ("a lot of things") which do not require a considerable amount of exertion. Apart from the household duties to which I have referred in paragraph 7. above, I consider that I am not precluded from giving consideration to other household duties which, as a matter of common knowledge, normally arise in any household, and do not call for sustained and considerable exertion. Thus, although not specifically referred to in the evidence, I think it reasonable to find that the claimant can lay the table for breakfasts, lunch, tea or an evening meal, can prepare for such meals, and wash up thereafter. She is, I would judge, capable of some dusting, cleaning, sewing, mending and also washing individual articles of clothing as required, and is capable of exercising an overall supervision and direction of the assistance she receives. Whilst she cannot herself do weekly shopping from a supermarket by carrying the shopping, she goes shopping with her husband by car, and has no impairment in dealing with tradesmen. I think it reasonable to find, as I do, that she can plan for her household requirements in the way of food to be purchased, and for the purchase of articles of domestic use. All the above activities in my view are household duties which the claimant can perform without assistance, and are household duties to a substantial extent which she can reasonably be expected to perform.

12. My decision therefore is that the claimant cannot be treated as incapable of normal household duties from 13 September 1978, and

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non-contributory invalidity pension is not payable from that date. She is not required to make repayment of benefit received as a result of the implementation of the local tribunal decision. The appeal of the insurance officer is allowed.

(Signed) R J A Temple
Chief Commissioner

Date: 10 May 1979

Commissioner's File: C.S. 101/1979
C I O File: I.O. 1045/NV/79
Region: HNCIP Unit NFCO