

IEJ/GJH

SOCIAL SECURITY ACTS 1975 TO 1980

CLAIM FOR NON-CONTRIBUTORY INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision C S 15/81

1. Upon this appeal, in which the claimant is represented by her Trade Association, an oral hearing has been requested. But I have refused that request as I am satisfied that the appeal can properly be determined without one. That is because I am able without further argument to allow the appeal in substantial part, and because to the extent to which I am rejecting the appeal no further evidence or argument can alter it being a hopeless appeal.

2. My decision is that:-

- (1) Non-Contributory Invalidity Pension (which I will refer to as "HNCIP") is not payable in respect of the claim made on 30 May 1979 as regards the period of claim from 1 July 1978 to 13 January 1979 (both dated included) because the claimant cannot in respect of that period satisfy the requirement under Section 36(1) of the Social Security Act 1975 ("the Act") of not less than 196 consecutive days of incapacity immediately next preceding the date claimed for.
- (2) HNCIP is payable in respect of the above mentioned claim for the period from 15 January 1979 to 27 November 1979 (both dates included) 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: Section 36(2) and (7) of the Act and Regulation 13A of the Social Security (Non-Contributory Invalidity Pension) Regulation 1975 as amended and in force at the material time.
- (3) I further decide that the claimant has proved that she was incapable of performing normal household duties by reason of some specific disease or bodily or mental disablement from 28 November 1979 down to at least 28 May 1980. The foundation upon which I do this is

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is indicated in paragraph 15 below, and the materiality of my so doing will be apparent from paragraph 14 below when read in the light of these preceding paragraphs.

3. I can deal quite shortly with the part of my decision indicated in sub paragraph (i) of paragraph 2 above. The claimant whose normal occupation was as a shop assistant, on 1 July 1978 suffered an accident at work, and has not worked at any time since. But at all material times down to 1 July 1978 she was working normally in that occupation. The 196 days requirement above referred to cannot therefore be satisfied by her in respect of any day prior to 15 January 1979 and the part period of her claim of 30 May 1979 constituted by 1 July 1978 to 13 January 1979 must clearly be disallowed on that account without scope for argument to the contrary.

4. The grounds for my decision under sub paragraph (ii) of paragraph 2 above involve detailed consideration of much wider aspects of the claimant's condition and circumstances, and independently of those involve my first reaching conclusions on certain matters of law. The undermentioned events are material in the latter context:-

<u>Date</u>	<u>Events</u>
1 July 1978	Accident
13 January 1979	196 days elapsed since accident
14 January 1979	197th day
6 August 1979	Date of insurance officer's decision disallowing original claim
8 November 1979	Date of local tribunal decision on appeal in respect of original claim
28 November 1979	Date from which benefit claimed under second claim
4 March 1980	Date of second claim
15 April 1980	Date of Form HA45 medical report in respect of second claim
15 August 1980	Insurance officer's decision accepting incapacity from 28 November 1979 to 27 May 1980 (both dates included).

5. Following the inception of her original claim for HNCIP on 30 May 1979 a Form HA45 medical report was bespoken by the Department in respect of the claimant. That report was given dated 25 June 1979

by Dr S, who examined the claimant on that date. The content of that report included the following expressions of opinion:-

- (i) that the claimant should refrain from paid work;
- (ii) that the descriptions of the claimant at items 1 to 5 of the form could not be applied to her for the entire period since 17 December 1977 but could be applied since 1 July 1978;
- (iii) that the claimant:-
 - (a) was likely to remain at least as restricted in her ability to perform the normal household duties in her own home; and
 - (b) should refrain from (paid) work "until further notice".

6. The Tribunal Decision R(S)5/80 has recently thrown new light upon the procedure to be followed by an insurance officer in dealing with claims, but has not in terms dealt with the particular situations which arise in respect of "open-ended" claims of the character above indicated. It is material for the purposes of my present decision that I reach certain conclusions of my own in that context.

7. The first question I have to consider is whether Regulation 11 of the Social Security (Claims and Payments) Regulations 1979, operative as from 9 July 1979 (or its predecessor in identical terms operative as from 30 August 1977) bears at all in the present case. It will be recalled that it was Regulation 11 in its present form (ignoring a further amendment effective as from 5 September 1979 but immaterial for the purposes of this decision) which was under close consideration in Decision R(S)5/80.

8. (1) Regulation 11(1) has at all now material times made express reference to claims for HNCIP, but is expressed to be operative only if a "medical certificate" has been issued. Regulation 11(6) prescribes what is for that purpose a "medical certificate" and does so in terms which in my judgment make it unequivocally clear that a Form HA45 report is not a "medical certificate" for the purposes of Regulation 11. However, Regulation 11(7) read in conjunction with Regulation 11(8) makes it in my judgment unequivocally clear also that the form of certification of incapacity which is embodied in Form HA45 and material to a HNCIP claim is nevertheless to be regarded as if it were a "medical certificate" triggering the application of Regulation 11(1).
- (2) It follows that when a claim to HNCIP has been made and comes before an insurance officer for adjudication supported by a Form HA45 certification of incapacity, it comes before him, by the force of Regulation 11(1),

as to be treated (unless in any case the Secretary of State otherwise directs) as if made by the claimant for the period specified in that certification. That is still not an "exact fit" because the Form HA45 report certification - which is in practice given weeks, if not months, after the date of claim by the claimant - even if so completed as to indicate a finite terminal date (which in my experience it seldom is) is not so framed as to indicate a commencement date of incapacity (otherwise than by what is said as to the 196 days last past) - so that applying Regulation 11(1) to a certification on Form HA45 will even with the modifications provided for elsewhere in that regulation as to its application to HNCIP claims leaves something of a vacuum as to any period prior to the date of claim for which the claimant has herself claimed HNCIP, as also as to dates after the date of claim but prior to the date of the Form HA45 certification. Further, an interval of often substantial length will ensue after the Form HA45 certification has been given, but before the claim comes before an insurance officer for decision. But, at first sight at least, Regulation 11(1)(b) would confine the period for which benefit could then be awarded to a maximum of 13 weeks subsequent to the date of the claim.

9. (1) I must here interpose also that the Social Security (Medical Evidence) Regulations 1976 provide that where (as obtains in respect of HNCIP claims) a person claims a benefit his entitlement to which depends on his being incapable of work in respect of the day or days to which the claim relates he shall (see Regulation 2(1)) "furnish evidence of such incapacity in respect of that day or those days either by means of a certificate in the form of a statement in writing given by a doctor in accordance with the rules set out in Part I of Schedule 1 to these Regulations on the form set out in Part II of that Schedule or by such other means as may be sufficient in the circumstances of any particular case". But the form of certificate so set out is not that exemplified by Form HA45, and in my judgment a report on Form HA45, although receivable in support of a claim for HNCIP, is so receivable in the character of "such other means as may be sufficient in the circumstances of any particular case". Further, because a Form HA45 report is not in the form set out in Part II of Schedule 1 to the above mentioned Regulations, their provision authorising in certain circumstances employment in a certification of incapacity of the formula "until further notice" does not bear.
- (2) But that does not in my judgment invalidate its employment in Form HA45 by a doctor certifying in accordance with the requirement of that form. Materially, however, the employment of the formula "until further notice" in a certification of incapacity has the effect of rendering

the claim period under the claim to which it relates of no finite duration until a material supervening event occurs.

- (3) If and when the claim itself is disallowed, and so finally disposed of, the indefinite character of the claim period is of no further materiality. Short of that, the claim must be regarded as a continuing and subsisting claim for adjudication purposes until whichever of the under-mentioned events first occurs to transmute it to a claim for a finite period to which the termination can then be attributed.
- (4) The events which will effect the transmutation are -
 - (i) death of the claimant; or
 - (ii) the substitution, upon a further notification from the originally certifying doctor, of a specific terminal date;

and it must be inferred that any supervening death or disability of the originally certifying doctor will preclude any subsequent occurrence of (ii).

10. (1) It is in my judgment clear that some "gloss" has to be placed upon the operation of Regulation 11(1) in the case of HNCIP claims to give effect to the obvious intendment that it shall apply in principle. It seems to me that the reference in Regulation 11(1)(a) to the period specified in the certificate must be read as if it referred to the period specified in the certificate as read in combination with the Form BF450 claim to which the Form HA45 report refers. So read the original date from which benefit is claimed on the Form BF450 serves as the commencement of the material period and the Form HA45 report certification adds (finitely or otherwise) the period of its further subsistence.
- (2) Having regard to the declared intendment of Regulation 11 to deal with "forward" allowances and disallowances of, amongst other benefits, HNCIP it seems to me to follow also that the reference in Regulation 11(1)(b) to award of benefit for "the whole or part of that period after the date of claim but not exceeding 13 weeks or such shorter period as the Secretary of State may in a particular case direct;" must when read in conjunction with the provision which is made in paragraph 11(1)(c) for further decisions to be given where part only of the period for which the claim is treated as made is initially the subject of award of benefit be read with the "gloss" that this in no way inhibits the award of benefit for dates prior to the date of claim for which benefit has been claimed - and as permitting an insurance officer before whom a claim not previously adjudicated

upon comes for decision to make consecutive decisions on the same date, each limited to a maximum period of 13 weeks, sufficient to render the cumulative award he makes one carrying his decisions down to the closing date of the certified period (if that has already occurred when he comes to give his decision) or to the conclusion of the next to elapse period of 13 weeks, measured from the date of claim, if the certification has embodied a finite terminal date which extends beyond then or is (as by "until further notice") "open ended" and has not been the subject of further notice.

11. If an insurance officer can properly so proceed to deal with a claim it is in my judgment equally open to the other adjudicating authorities - the local tribunal and the Commissioner - to do so also, and as at the date when the matter appears before them upon appeal from an original insurance officer's decision. Whether a local tribunal or a Commissioner will think it right to give a decision applicable down to so late a date will be a matter for them - frequently the medical evidence before them will not be up to date enough to warrant doing so. Moreover in the case of an "open ended" certification, they may well not at the time of their decision know whether or not subsequently to the insurance officer's decision the "open end" has been closed.

12. (1) I must now apply the foregoing conclusions to the facts of the instant case.
- (2) As indicated in 4. above, the local tribunal on 8 November 1979 dismissed the claimant's appeal from the insurance officer's adverse decision upon her original claim. But the claimant also made a second claim for HNCIP in March 1980, whereby she claimed benefit from 28 November 1979; and under that she has been accepted as satisfying the burden of proof of incapacity (and I am given to understand, benefit has in fact been awarded for the period 28 November 1979 to 27 May 1980 and for a further subsequent period). But throughout the period from 30 May 1979 to 27 November 1979 the claimant's claim for HNCIP instituted on 30 May 1979 has been pending decision, or the subject of decision still capable of reversal on appeal. Moreover, the acceptance of the claimant's second claim has involved an acceptance of her incapacity over the 196 days immediately preceding 28 November 1979.
- (3) It does not appear that any further notice has been given by Dr S withdrawing his certification under the original Form HA45 so as to bring a finite conclusion to the claimant's original claim. Indeed Dr S, who gave it, is also the author of the Form HA45 report in support of her second claim which embodies his opinion that her condition at the date of that report had subsisted in the material respect for the then antecedent 196 days - at least.

- (4) Stress is laid in the Decision R(S)5/80 upon the avoidance of injustice arising from the disallowance of a particular claim which flows from a claimant's freedom to initiate a further claim. But the absolute time limit upon payment of benefit for any date more than 12 months prior to date of claim (imposed by section 82(2)(c) of the Act) in combination with unavoidable delays which occur in the adjudication of - in particular the appellate jurisdiction over - claims to benefit can easily preclude a claimant achieving any success upon a fresh claim made only after a final decision has emerged in respect of an earlier claim. Thus the present claimant could not now succeed upon a claim for any date in 1979 now instituted.
- (5) True it is that if the claimant had had the prescience to incumber the Social Security administration with successive claims for HNCIP at appropriate intervals since 30 May 1979 whilst her original claim proceeded through its successive stages of adjudication and its ultimate fate was unknown to her, she could have "covered" her position fully as regards benefit for dates within the year 1979. But, understandably, she did not have that prescience; and I am not averse to conclude that in consequence no route to success on the merits as regards benefit subsequent to 13 January but prior to 28 November 1979 lies open within the framework of the present appeal.
13. (1) Bearing again in mind that the clear intendment of Regulation 11(1) is to deal with forward allowance and disallowance and that Decision R(S)5/80 expressly deals only with the exercise by an insurance officer of powers of decision over a "prospective" period, I have accordingly to consider whether there is any inhibition upon an insurance officer, a local tribunal, or a Commissioner, giving a decision - in respect of a period of claim which has already run by the time the decision comes to be given - disallowing the claim for part of the total elapsed claim period and allowing it for another part of the elapsed claim period. For if Decision R(S)5/80 is to be taken to embrace any broader principle than that a prospective disallowance must be of the entire prospective future claim period - in particular if it is to be read as importing that a decision embodying any disallowance must of necessity be a disallowance of the entire claim - I could not in the present case, since I must inevitably disallow the claimant's claim for the period 1 July 1978 to 13 January 1979, entertain her claim on the merits as regards any later claim date.
- (2) In my judgment Decision R(S)5/80 is not to be so broadly read. Nor am I aware of any other authority which constrains me to take such a course. It appears to me to be inherent in the character of the jurisdiction conferred upon the statutory authorities that they have

jurisdiction to give a decision upon a claim for the full claim period which has elapsed by the time their decision comes to be given, if they think it proper to do so. I need not for the purposes of my present decision express any view as to whether a local tribunal or a Commissioner can go further and make a forward allowance in respect of a date or dates subsequent to that of the decision.

14. Still proceeding in the light of the conclusions above reached and expressed and on the footing that I have first decided that the appeal fails as regards the part of the claim period from 1 July 1978 to 13 January 1979, I come now to consider subsequent dates within the claim period now in point. In that context, and in the light of Decision R(S)5/80 as amplified by the Decision C(S)3/81 (unreported) - with which I respectfully concur - the present appeal prospectively constitutes a re-hearing on appeal of the total claim period which commenced 1 July 1978 and thence forward of indefinite duration by reason of the HA45 report certification "until further notice". In particular the original claim has subsisted as a continuing claim over and beyond 15 August 1980, the date of the insurance officer's favourable decision upon the claimant's second claim, notwithstanding the entry into the arena of that - separate - later claim.

15. (1) I will here interpose that I understand it to have been accepted administratively for many years prior to the above decisions becoming known that a later medical certification superseded and concluded a still running period under an antecedent certification the subject of a benefit claim. That is now clearly not the law, and the practice of inviting renewal claims for HNCIP at recurrent intervals following an initial award will result in each successive claim subsisting alongside with the subsequent renewal claim/s, and requiring separate successive adjudications on its own account, so long as it continues to subsist. (ie unless and until a particular claim drops out because its subsistence "until further notice" has been terminated in one or other of the circumstances indicated in paragraph 8(3) above).

(2) I do not foresee that this need occasion any great administrative complication; and if it does it can no doubt be dealt with by legislation. But I mention the point at this juncture because there are at least two subsequent HNCIP claims by this claimant now in play apart from the claim of 30 May 1979 which is alone in issue upon the present appeal, but both of which have been the subject of acceptance of incapacity, and for the reasons already above indicated the claimant's original claim has to be regarded as overlapping her later claims.

16. (1) I have for that reason procured to be added as evidence on the present appeal the claim forms and medical

evidence (on Forms HA45) in respect of the two later claims known to me to have been made.

- (2) Whilst such added material does not include the insurance officer's decisions on those claims specifically awarding benefit, it does include an insurance officer's decision in each case accepting incapacity as proved. I have considered such additional evidence and am independently satisfied that the claimant has proved incapacity in the material respect for the period from 28 November 1979 over 28 May 1980, this being the tenor also of those two decisions. Although those issues as to incapacity have been the subject of consideration (and decision) by insurance officers in the context of those separate - from - this - claims, they also separately arise in regard to the claim the subject of the present appeal; and in that context first arise in the course of this appeal. Accordingly, and to avoid any doubt in the matter, I have thought it right to incorporate in my decision the decision expressed in paragraph 2(iii) above, which I make in exercise of my jurisdiction under section 102 of the Social Security Act 1975.
17. (1) I come now to consider the nub of the present appeal in practical terms - consideration of the original claim on its merits as regards the period 15 January to 27 November 1979.
- (2) In completing the Form BF450 dated 30 May 1979 the claimant, who was then 36 years of age, indicated that she resided in a house comprising 6 rooms entered up two steps and neither specially built nor adapted to help her cope with her disability. She further indicated that she so resided with her husband and two sons, one over 16 and the other aged 9. She received help with the household jobs, because of her condition, from her husband, son and mother - with the shopping, washing, ironing, cleaning and making beds.
- (3) Of the 20 separate household activities listed in Part 3 of Form BF450 the claimant indicated only 3 as tasks she was unable to do at all, namely using a vacuum cleaner or carpet sweeper, cleaning windows, and making the beds. Of 7 more she indicated that she was able to do a little of it, namely getting to the shops, collecting what she wanted in the shops, getting the shopping home, drying washing, doing the ironing, cleaning and polishing. She further indicated that she was able to do most of the preparation of the food for cooking, moving pots about, cooking food, washing up, doing the washing, removing washing from the machine or sink, and dusting and tidying.
- (4) She indicated further that she was able to do all the household activities comprised in deciding what to buy,

deciding what food to prepare and dealing with callers e.g. tradespeople.

- (5) On the same form the claimant indicated that she had been in hospital for 10 days in February 1979.
- (6) When Dr S rendered the Form HA45 report dated 25 June 1979 he indicated that the claimant had since December 1977 experienced bilateral iliac fossa pain which was investigated by a gynaecologist and general surgeon, that investigation including IVP and barium x-rays gave normal results; but that in July 1978 the claimant had suffered a fall injuring her neck, resulting in back pain in the region of L2/L3. X-ray of her cervical spine had shown osteophytic encroachment of C5/C6, she had been admitted for traction and bed rest under an orthopaedic surgeon for the 10 days above mentioned and advised to wear a lumbo sacral support.
- (7) Dr S's report went on "in constant pain during ordinary household tasks has been advised not to do bed making, vacuuming, bending and lifting or to carry heavy shopping."
- (8) In addition to the claimant's condition of prolapsed intervertebral disc with bilateral suchia, Dr S considered her disorder of cervical spondylosis also relevant.
- (9) As I have already indicated, Dr S advised that the claimant should refrain from paid work until further notice and expressed the view that she was until further notice likely to remain at least as restricted in her ability to perform the normal household duties in her own home as she then was.
- (10) Dr S took a much less sanguine view of the claimant's capacities than was reflected by the claimant's own statement of her limitations, although he indicated that hers was broadly consistent with his own assessment. Of the 12 listed functions under paragraph 4 of Form HA45 Dr S did not regard the claimant as having little or no effective function in any - but commenting upon the assessments, under the heading of any special features the assessment did not cover, he said "many of above tasks should not be performed because of advice from orthopaedic surgeon". The grading of functions he made was clearly subject to that overall reservation and was as follows:-

Substantial impairment:

Lifting and carrying, bending, kneeling, climbing stairs, sustained exertion.

Slight impairment:

Reaching out and up, standing, walking outside the home.

No impairment:

Walking within the home, manipulative ability, planning, communication.

- (11) I should also briefly mention that on 16 July 1979 the claimant underwent examination on behalf of the divisional medical officer and by report on Form RM9 was held incapable of work at her occupation of shop assistant.

18. The insurance officer who gave the decision dated 6 August 1979 disallowing the claim of 30 May 1979 in its entirety was clearly right as regards the claimant's non-fulfilment of the 196 days requirement prior to 14 January 1979; and I need not further burden my decision in reference to any period prior to 14 January 1979.

19. (1) The claimant having appealed against the insurance officer's decision, in its entirety, to the local tribunal, the insurance officer then concerned included in his written submissions to the local tribunal a correct intimation that the claim was covered by the amended form of Regulation 13A(2) of the Social Security (Non-Contributory Invalidity Pension) Regulations 1975 applicable from 13 September 1978 and included in his submissions an appropriate citation of the Decisions R(S)6/79 and R(S)7/79 as to the questions arising therefrom. The standard of incapacity so prescribed is indeed a stringent one to comply with. He submitted that having regard to the whole of the evidence and in particular to the jobs the claimant had stated she could do - which included most of the cooking, washing, dusting and tidying and a little shopping, ironing and cleaning - also the doctor's assessment which had showed the majority of the claimant's functions to be slightly impaired or unimpaired, the claimant could reasonably be expected to perform normal household duties to a substantial extent and that the claimant accordingly failed to substantiate incapacity in the material respects.
- (2) It is now clear that his reference so made to the "majority" of functions led to the claimant's representative before the local tribunal laying considerable stress upon a quantitative analysis of the claimant's incapacity.
- (3) The local tribunal's findings on questions of fact material to their decision were brief in the extreme. They found "claimant last worked 1 July 1978. Evidence on Form BF450 and BF45 accepted". The reference to BF45 is clearly in error for HA45. Their grounds of decision (after disposing of the 196 days ground for dismissing the appeal as regards the period down to

14 January 1979) were:

"the tribunal has noted carefully the claimant's evidence and the arguments put forward by the claimant's representative. Much emphasis was put on the degree or percentage of disability by the claimant's representative and it was suggested this was the test to decide what was 'substantial impairment'. The tribunal rejected this argument entirely as this considered that the question to be answered cannot be decided from such a test. All ladies who apply for this benefit have problems and the tribunal appreciate the handicap from which the claimant suffers and would in no way minimise her problems. The tribunal must apply the rules and regulations set down and take note of the Commissioner's decisions. On the basis of the information supplied by the claimant on Form BF450 and the Doctor's Form HA45, the tribunal find the claimant can without substantial assistance from another person perform her normal household duties to a substantial extent and can reasonably be expected so to do. The insurance officer's submission is supported and the appeal fails".

20. (1) To my mind insufficient (if any) attention was given in arriving at that decision to the qualification under which the grading of functions by Dr S in the Form HA45 was expressed. That qualification bore acutely upon what the claimant might reasonably be expected to do, as distinct from that which she was physically able to do. A person may well be physically able to touch a live electric rail, but cannot reasonably be expected to do so (whether under advice not to or in awareness that acute injury will be incurred if she does). Evaluated in the light of Dr S's general qualification and reservation the range of household tasks which the claimant was both able to do and might reasonably be expected to do was clearly much less than she herself had indicated.
- (2) Bearing in mind her substantial impairment for sustained exertion, in combination with the very broad extent to which bending and lifting are involved in the normal range of household duties, I consider that as the evidence stood before the insurance officer and the local tribunal the claimant should have been held to have established incapacity for normal household duties, and I now hold that she has done so. In so holding I attach importance also to the circumstance that, as the local tribunal were informed and was reflected in the HA45 report, the claimant was wearing a full length support from the bottom of her spine to the base of her neck - which whilst no doubt affording valuable support is also a substantial impediment to free movement of the body.

21. (1) In submitting her grounds of appeal to the Commissioner dated 4 March 1980, the claimant indicated that she had difficulty in bending to write her statement and had dictated the grounds of appeal. She also indicated that Dr S, who was in fact her own GP, had immediately indicated to her that he had been appalled that her claim had been disallowed.
- (2) I should perhaps here mention that the appeal has in fact been brought out of time, but by leave in that behalf - and nothing further now turns upon this aspect.
22. (1) In completing the Form BF450 of the subject of her second claim, on 4 March 1980, the claimant indicated, amongst other information, that she had again been in hospital for 4 periods between 28 November 1979 and 1 February 1980; and on this form she took a much less sanguine view of her own capacities when listing her ability to perform normal household tasks. Twelve of the listed tasks she said she was unable to do at all, 6 she said she was only able to do a little of, and none was she able to do all of. The only tasks she said she was able to do "most of" was deciding what to buy when shopping (although unable to get to the shop) and deciding what food to prepare (although only able to do a little of the preparation).
- (2) By further statement of the same date the claimant, indicated that her condition had worsened since 28 November 1979 when she had undergone a laminectomy operation at Barnsley District General Hospital, and that she was currently an out-patient at that hospital receiving therapy. She also indicated that she was unable to dress herself or bath herself; that her husband helped her to dress; and that she had to manage without baths.
23. (1) As has been pointed out in Commissioner's decisions, considerable reserve is required in accepting medical evidence referable to a period subsequent to that in issue as relevant when evaluating a claimant's condition for the purposes of an appeal in respect of an antecedent period. But in the present case it was the same Dr S who rendered the HA45 report in respect of both the original and this second claim; and I consider his report on this second occasion, dated 15 April 1980, of considerable retrospective significance.
- (2) In it he indicated that the claimant's then present symptoms were inability to bend, balance and lift and that she had to be helped to get dressed, had pain in the entire spine radiating to both thighs - all attributable to prolapsed intervertebral disc occasioned by her fall on 1 July 1978 and constituting the main disorder restricting her ability to perform her normal household duties or undertake paid employment - and indicated also as relevant the claimant's cervical spondylosis of

which he wrote "pain on both sides of neck radiating to left hand. Symptoms variable. Movements fairly full today."

- (3) His assessment of her then present mental and physical condition affecting her ability to perform her normal household duties or undertake paid employment included the sentence - highly significant for my purposes - "the pain and disability were much worse before laminectomy was performed, but balance has been worse." In grading her functions - again under the qualification that the claimant's orthopaedic surgeon had advised the claimant not to lift, bend, use vacuum or make beds - Dr S found her on 15 April 1980 to have normal capacity in only 2 of the 13 specified functions; namely planning and communication; substantial function in walking within the home and manipulative ability; but only slight function in:

- (i) lifting as in preparing and cooking a meal;
- (ii) reaching out and up;
- (iii) walking outside the home; and
- (iv) climbing stairs.

Moreover he found the claimant to have no degree of function in:

- (i) lifting as in doing washing, getting shopping;
- (ii) carrying as in preparing and cooking a meal;
- (iii) carrying as in doing washing, getting shopping;
- (iv) bending;
- (v) standing;
- (vi) kneeling;
- (vii) sustained action.

Of walking outside the home he qualified his grading "Almost none", and later added "walking outside the home is only possible when accompanied owing to defective balance".

- (4) In question 8 on this Form HA45 Dr S was asked, "in your opinion, could your description of the claimant at items 1-7 be applied to her for the entire period from 26 June 1979?" He answered "no". 26 June 1979 would have been a date inserted by the Department when bespeaking the report, and is in fact the day following Dr S's earlier Form HA45 report.

- (5) In response to the further enquiry "If no, please give details of any changes and the approximate dates on which they occurred", he stated "bending and lifting were more severely impaired and pain was more marked prior to the laminectomy on 11 January 1980. Balance has been worse since that time."

24. Although it might appear otherwise at first sight, I do not myself regard the circumstance that the claimant's second claim claims benefit from 28 November 1979 (the date of one of her admissions as a hospital in-patient) as marking a water-shed in her condition, despite her own intimation as to her condition having deteriorated since that date. Giving what appears to me due weight to Dr S's observations above cited from his second HA45 report it appears to me clear that the claimant's condition underwent progressive deterioration during the year 1979 and that she was already in constant and substantial pain, and precluded thereby from doing any ordinary household tasks of substance, prior to her admission to hospital for traction in early February 1979 - and at all material times thereafter until the laminectomy on 11 January 1980. Viewed with hindsight I am satisfied her condition was not "borderline" at any time after 14 January 1979 and that thenceforward she was both incapable of work and could not, and could not reasonably be expected to, perform normal household duties to any substantial extent.

25. My decision is accordingly stated in paragraph 2 above.

(Signed) I Edwards-Jones
Commissioner

Date: 11 August 1981

Commissioner's File: C S 285/1980
C I O File: I O 1370/NV/80
Region: HNCIP Unit, NFCO