

DGR/BOS

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR NON-CONTRIBUTORY INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

CS 299/1982

1. My decision is that non-contributory invalidity benefit is not payable in respect of the claim made on 31 August 1981 because the claimant has not proved that she has from that date, and during the 196 days preceding the same, been incapable of paid work and of performing normal household duties by reason of some specific disease or bodily or mental disablement.
2. In order to qualify for non-contributory invalidity benefit the claimant has to satisfy two conditions. She has to show that from the relevant date she has by reason of her medical condition been (i) incapable of work and (ii) incapable of performing normal household duties. A failure to satisfy either of those conditions is fatal. In the present case the local insurance officer took the view that the claimant was unable to satisfy condition (ii), and expressed no view as to her ability or otherwise to fulfil condition (i). It was unnecessary so to do, the claimant having failed to satisfy condition (ii).
3. The claimant appealed against the insurance officer's decision to the local tribunal, who took the view that the only ground of disallowance was the claimant's incapacity for performing normal household duties, and that this was the only matter under appeal. If this was the case, then the local tribunal should have confined their decision to consideration only of whether the claimant was capable of household duties. They should not have gone on to decide, as they in fact purported to do, that, having satisfied the "household duties" test, she was entitled to non-contributory invalidity benefit. This was a clear non sequitur. The rejection of the insurance officer's decision that the claimant was not incapable of performing normal household duties imposed a duty on the insurance officer to go on to consider whether the claimant satisfied the test of capacity to undertake paid work.
4. Although the local tribunal could, I think, have properly restricted their consideration to the specific issue before them, provided, of course, they did not go on to make an award which could only be justified in the light of further findings, nevertheless

it was open to them, as the appeal constituted a complete re-hearing, to consider all the elements crucial to deciding whether the claimant was entitled to non-contributory invalidity benefit, and this is normally the more convenient course. What the claimant was really seeking in her appeal to the local tribunal was, not so much a reversal of the insurance officer's view of her capacity or otherwise to perform normal household duties, but rather a reversal of the refusal of the actual award, and to do this consideration was also necessary of the claimant's capacity for paid work. The refusal of the local tribunal to consider this other aspect of the case meant that no determination on the actual award could be made, but that the matter had, in the event of success by the claimant on the narrow point of her inability to perform normal household duties, to be referred back to the insurance officer. Normally such an approach is unnecessarily time-wasting, and is not to be encouraged.

5. The insurance officer now appeals to the Commissioner, and for the reasons given above I have no hesitation in setting aside the decision of the local tribunal. However, rather than refer the matter back to the local tribunal for re-hearing, I think it would be more expedient if I disposed of the appeal finally myself, as I am empowered to do (R(U) 3/63). This appeal is, of course, a re-hearing before me, and I am free to consider any issue, provided that the claimant has been given a proper opportunity of meeting any fresh point that may have been raised (R(F) 1/72).

6. The local tribunal who had the advantage of seeing and hearing the claimant formed the view, albeit they made no specific finding, that the claimant could undertake clerical employment, provided that conditions were suitable for a wheelchair. Having considered the evidence before me I agree with the tribunal's view.

7. Accordingly, being satisfied that the claimant is capable of paid work, and has been so since 16 February 1981 (the commencing date of the 196 days qualifying period), I have no option but to allow the appeal. The claimant simply does not qualify for non-contributory invalidity benefit. However, there can be no question of repayment of benefit overpaid, the claimant having throughout exercised due care and diligence to avoid such overpayment.

8. This appeal is allowed.

(Signed) D G Rice
Commissioner

Date: 13 August 1982

Commissioner's file: C.S. 229/1982
C I O File: I.O. 8197/NV/82
Region: North Fylde Central Office