

JGM/FB

SOCIAL SECURITY ACTS 1975 TO 1977

CLAIM FOR NON-CONTRIBUTORY INVALIDITY BENEFIT

DECISION OF THE NATIONAL INSURANCE COMMISSIONER

Name: Mabel Kathleen Bentley (Mrs)

Local Tribunal: Liverpool

Case No: 187/3

1. My decision is that non-contributory invalidity pension (the pension) is payable to the claimant for the inclusive period from 17 November 1977 to 12 September 1978.
2. This is an appeal by the claimant from a decision of the local tribunal confirming a decision of the insurance officer that the pension was not payable from 17 November 1977. The claimant asked for an oral hearing of her appeal, but as I am able to allow it without troubling her to attend I did not grant a hearing.
3. The pension is payable to a married woman who, like the claimant, is residing with her husband only if at the relevant time she is both incapable of work and of performing normal household duties. Moreover there must have been a period of 196 consecutive days throughout which she was so incapable. It is not in this case suggested that there is any material difference from day to day in the capacity of the claimant, and the real question is whether the claimant's incapacity throughout has been incapacity for both work and normal household duties.
4. The claimant is now aged 54. She has had a stroke and suffers from left hemiplegia. She wears a caliper on her left leg and can walk only with a stick. It seems that the use of her left hand is not seriously impaired. There is a range of household duties which she cannot perform satisfactorily and a range that she can perform more or less adequately. The insurance officer concluded that the claimant's overall performance was such that she could not be said to be incapable of performing normal household duties and disallowed her claim. The claimant appealed to the local tribunal and in his written submission to that tribunal the insurance officer stated that he would not dispute that the claimant was incapable of work, while maintaining that she was not incapable of normal household duties. The local tribunal dismissed the appeal on this latter ground, but added that the claimant was capable of performing paid employment of a sedentary nature.

5. The insurance officer concerned with the appeal to the Commissioner submits in the light of a decision of a Tribunal of Commissioners (CS 5/78 to be reported as R(S) 7/78) given since the date of the local tribunal hearing that the claimant has at all material times down to 12 September 1978 been incapable of performing normal household duties, and I accept this submission. He further submits that it is for consideration whether the claimant was at all such times incapable of work. While it is possibly correct that the claimant could do the sedentary work once she had reached the place where she could do it, she would be in grave difficulty over getting to and from work, and of moving round at her place of work. I doubt if any employer would take her on otherwise than on compassionate grounds. This in my judgment does not amount to capacity for work and I hold that the claimant was for the period mentioned in paragraph 1 entitled to the pension.

6. Regulations coming into force on 13 September 1978 referred to in the submission of the insurance officer now concerned have altered the position in relation to capacity for normal household duties. I leave it to be decided by the insurance officer (subject to appeal) after receiving any further submissions or evidence adduced by the claimant in the light of the new regulation to determine the question of entitlement to the pension from that date.

7. The claimant's appeal is allowed.

(Signed) J G Monroe
Commissioner

Date: 20 February 1979

Commissioner's File: C.S. 970/1978
C.I.O. File: I.O. 1451/NV/78
Region: HNC1P Unit NFCO