

RJAT/JP

SOCIAL SECURITY ACTS 1975 TO 1979

CLAIM FOR NON-CONTRIBUTORY INVALIDITY BENEFIT

DECISION OF THE NATIONAL INSURANCE COMMISSIONER

1. This is an appeal by the claimant, who is a housewife, from the decision of a local tribunal who dismissed her appeal, from a decision of an insurance officer, that non-contributory invalidity pension was not payable from 17 November 1977. At the time when these decisions were given and up to 12 September 1978 regulation 13A of the Social Security (Non-Contributory Invalidity Pension) Regulations 1975, [S.I. 1975 No 1058] inserted into those Regulations by force of regulation 2 of the Social Security (Non-Contributory Invalidity Pension) Regulations 1977 [S.I. 1977 No 1312], was in operation. The effect of that regulation, prescribing the circumstances in which a person is to be treated as incapable of performing normal household duties was decided by a Tribunal of Commissioners in decision R(S) 7/78 on 8 September 1978.

2. In order to be entitled to the pension a married woman residing with her husband must not only be incapable of work but also incapable of performing normal household duties (Section 36(2) of the Social Security Act 1975). As to regulation 13A, effective to 12 September 1978, the Commissioners held that incapacity for such duties must be judged by reference to what a woman is unable to do and whether that is substantial; it is not material to consider what she is able to do and whether that also is substantial. The claim to the pension for the period ending 12 September 1978 falls to be decided on the above considerations.

3. As to the period after 12 September 1978. On 13 September 1978 fresh regulations, namely the Social Security (Non-Contributory Invalidity Pension) Amendment Regulations 1978 [S.I. 1978 No 1340] were in force. These apply a different test, raising the following questions (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 raised question (2). If the answer to this question is positive, the claim will fail; if negative, it will succeed. The relevant

regulation is set out at paragraph 8 of the further submission made by the insurance officer now concerned.

4. The claimant has a history of rheumatic heart disease, and has had mitral, aortic and tricuspid valve replacement with Braunwald-Cutter prosthesis. She easily gets tired after very little exertion and breathless after very little physical work. She rests in bed every afternoon for 3 hours and lives in a bungalow with 2 steps outside. She has substantial impairment for sustained exertion, and is normally unable to do weekly shopping, washing, or house cleaning, and manages to iron lightweight clothes only by doing it sitting down. Considering the period up to 12 September 1978 on the approach set out in paragraph 2 above, I agree with the insurance officer that there is a substantial amount of normal household duties which the claimant cannot perform, and as regards the period 17 November 1977 to 12 September 1978 my decision is that the claimant (who is also incapable of work) is entitled to the invalidity pension she has claimed.

*Final Evidence*  
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*Appendix*

5. It remains to consider the evidence in relation to the period after 12 September 1978 on the different approach set out in paragraph 3 above, the emphasis being not on what the claimant cannot do, but on what she can do, or could reasonably be expected to do without substantial assistance or supervision.

6. The claimant's appeal to the local tribunal stated that she is able to do washing up, and manages to prepare the main meal. She can do light dusting and iron a few clothes each day. I appreciate that she has no capacity for sustained exertion such as doing a family wash, or using a vacuum cleaner entails, but there are household duties of substantial amount which do not demand great exertion. The claimant in her observations of 1 July 1979 does not state that she is unable to lay the table for meals, sew, mend, wash individual items of clothing and exercise an overall supervision and direction of such assistance as she receives. These tasks were referred to by the insurance officer in the submission of 22 June 1979. Additionally, although the claimant does not herself go shopping, I have no reason to suppose that she could not make out shopping LISTS of these commodities which her household requires from time to time. In my opinion, in the claimant's circumstances, the above household duties which the claimant can do without substantial assistance and can reasonably be expected to do constitute a substantial part of her normal household duties.

7. My decision is that from 13 September 1978 the claimant is not entitled to non-contributory invalidity pension. The appeal is allowed only to the limited extent indicated in paragraph 4 above.

(Signed) R J A Temple  
Chief Commissioner

Date: 30 July 1979

Commissioner's File: C.S. 136/1978  
C I O File: I.O. 1217/NV/78  
Region: Merseyside