

Invalidity Benefit - "good
cause for working" in
Reg 33(ii) UB Regs '83

JGMI/DH

Commissioner's File: CSS/65/85
CAO File: AO 4004/V/86
Central Office File: SCAO/1/86

para 7 - definition of
good cause for working i
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SOCIAL SECURITY ACTS 1975 TO 1986

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal:

Case No: 001/13

/ORAL HEARING/

page 153 of 7
Ogus & Barendt
page 36
CPAG Rights
Guide

1. My decision is that the decisions of the insurance officer awarding invalidity benefit to the claimant from 2 February 1982 to 15 February 1982, from 16 February 1982 to 22 August 1983 and from 27 August 1983 to 7 November 1983 (all dates included) are subject to review but do not fall to be revised.

2. This appeal by the claimant against the unanimous decision of a social security appeal tribunal was dealt with by me at an oral hearing at which the claimant, who attended and gave evidence, was represented by Mr C Orr, Welfare Rights Officer of Strathclyde Social Work Department. The adjudication officer was represented by Mr Mitchell.

3. In 1981 the claimant, then aged 52, was employed as a manageress with a firm of bookmakers. She became unfit for work due to a urinary tract infection and received sickness benefit, followed by invalidity benefit from 4 June 1981 onwards. Her medical condition, which has been variously described and which caused frequency of micturition and stress incontinence, was a severe one. The claimant was under hospital investigation from time to time over a lengthy period and was repeatedly assessed by regional medical officers as being unfit for work. Benefit was claimed in reliance on medical statements from the claimant's doctors advising her to refrain from work. In 1983 however the Department of Health and Social Security received information that the claimant had been engaged in selling lottery tickets from a kiosk in

After investigation an insurance officer reviewed and revised the decisions awarding invalidity benefit to the claimant, found an overpayment of benefit amounting to £2983.61 to have been made in the periods now under consideration and required repayment of the overpayment.

4. The claimant appealed to a social security appeal tribunal. After some adjournments a tribunal eventually refused the claimant's appeal and upheld the decision of the adjudication officer. The tribunal found that the claimant was fit for work and that the work done was not trivial and found that due care and diligence had not been exercised by

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the claimant. The tribunal's reasons were stated as being "Box 2 and 3 AT2 form". Those boxes contain references to the relevant statutory provisions and to four reported Commissioners' decisions. The decision of the tribunal does not comply with the requirements of regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984. No primary facts were found by the tribunal at all to support the findings which were made. A citation of statutory provisions and references to reported decisions does not explain a decision. The claimant in this case was being called upon to repay nearly £3000 of benefit said to have been overpaid. She had advanced a case in answer to that claim and was entitled to know why her defence was rejected. Having heard evidence in the appeal I have decided that the proper course for me is to exercise my discretion to substitute my own decision in this appeal rather than remit the case for a rehearing by another tribunal.

5. The claimant's case is somewhat bizarre on its facts. The claimant belonged to Football Club Social Club. A development society attached to the club sold lottery tickets on commission in order to raise funds for the club. The claimant was approached in February 1982 and asked if she was willing to help the club by selling these tickets. She agreed and from then until August 1983, with an occasional gap, she spent approximately 2½ hours per day on 4 days a week in a street kiosk in selling these lottery tickets. She received commission amounting in average to between £5 and £6 per week. After paying for bus fares and the cost of snacks, etc, she made little, if any, gain. The kiosk moreover was situated in the centre of outside a building housing the local office of the Department of Health and Social Security, whose staff were among the claimant's customers. The claimant told people she was "on the insurance" and manifestly did not realise that her activity would be considered "work" prejudicing her entitlement to invalidity benefit.

6. The claimant began selling the tickets in a period covered by the prior decision of an insurance officer awarding benefit to her. That decision was subject to review on the ground of the relevant change of circumstances represented by the claimant commencing her activities - section 104(1)(b) of the Social Security Act 1975. Thereafter decisions awarding further benefit were made by insurance officers in ignorance of that material fact and these are subject to review under section 104(1)(a). The amount of work done by the claimant was not so trivial that it can be disregarded. On the contrary it was work of a kind and carried out with sufficient regularity to lead to the conclusion that despite the claimant's medical condition she was fit for at least part-time work of a remunerative character. It is therefore necessary to consider the possible application of regulation 3(3) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 as amended and as now re-enacted as the same regulation in the 1983 Regulations of the same name. Regulation 3(3) provides as follows:-

"(3) A person, who is suffering from some specific disease or bodily or mental disablement but who, by reason only of the fact that he has done some work while so suffering, is found not to be incapable of work by reason thereof, may be deemed to be so incapable if that work is-

(i) work which is undertaken under medical supervision as part of his treatment while he is a patient in or of a hospital or similar institution, or

(ii) work which is not so undertaken and which he has good cause for doing,

and from which, in either case, his earnings do not ordinarily exceed £22.50 a week."

7. The "deeming" provision of regulation 3(3) is sought to be invoked in this case under subhead (ii). It is accepted by the adjudication officer that the claimant's earnings did not exceed the stipulated figure at any time. There is no doubt also that the work done was "work which is not so undertaken", that is, not work undertaken under medical supervision as part of treatment as mentioned in subhead (i). The question of importance is whether the claimant can show that she had "good cause" for doing that work. It appears to me that "good cause" in subhead (ii) is not necessarily limited to medical or therapeutic good cause, a possibility which I note was left open by the Court of Appeal in Merriman v Insurance Officer and Hunt v the Department of Health and Social Security, unreported, dated 14 June 1985. Nevertheless I consider that at least in general a claimant who has engaged in some work, particularly over an appreciable period, while under general medical advice to refrain from work will, if seeking to establish good cause for his or her activity, require to show that the activity was justified as being likely to be helpful and not harmful to their condition. In this case an attempt was made to provide retrospective medical evidence to that effect in support of the claimant's own evidence but the doctor's letter (which was unfortunately lost at or after the tribunal stage) appears to have been restricted to a reiteration of the claimant's continuing incapacity for ordinary employment. The doctor concerned was however not the doctor originally concerned with the claimant's treatment and in the circumstances while the letter does not appear to have been helpful I do not think it right to infer any disapproval of the claimant's activities from his silence.

8. The claimant's own evidence, which I accept as honest and substantially reliable, is to the following effect. Besides a prior history of medical trouble analogous to her urinary problem the claimant also has a history of episodes of nervous debility and depression in the past including one suicide attempt. (This feature of the claimant's case is clearly reflected in the entries in her short-term benefits record.) The claimant's job as a manageress settling bets in a bookmakers shop was demanding and busy and in 1981 the claimant was depressed by having to give up work on account of her medical condition. She was sharing her home with an adult daughter who also had a health problem and there was strain between them which accentuated the claimant's depression. The claimant was on medication both for her urinary problems and for depression. She accepted the opportunity to sell lottery tickets to help the club and in the hope of relieving her boredom and lifting her depression. She found the work easy, she had a heater in the kiosk and there was a toilet within a few yards, she had the opportunity to meet people and she became more cheerful and felt better. The activity made no apparent difference one way or the other

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to her urinary problems but her depression was lifted and she was able to cease taking (and, of course, to cease asking her doctor to prescribe) medication for it.

9. Having, as mentioned above, accepted the claimant's evidence on the foregoing matters I have come to the conclusion that notwithstanding the absence of the medical evidence which will normally be required in such a case in the circumstances of this case the evidence summarised above is sufficient to enable the claimant to establish "good cause" for the purposes of subhead (ii) of regulation 3(3) above quoted. The claimant is therefore entitled to be deemed incapable of work notwithstanding the work done by her and in these circumstances although the decisions awarding invalidity benefit are subject to review they do not fall to be revised.

10. The appeal of the claimant is allowed.

(signed) J G Mitchell
Commissioner
Date: 11 February 1987