

## SOCIAL SECURITY ACTS 1975 TO 1985

## CLAIM FOR INVALIDITY BENEFIT

## DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal: Rhondda Valleys

Case No: 5/13

1. My decision is that the decisions awarding invalidity benefit to the claimant from 21 November 1983 to 16 July 1984 (both dates included) may be reviewed but are not to be revised.
2. The claimant, who is aged 28 years, had been in receipt of sickness benefit, followed by maternity benefit followed by invalidity benefit from 8 March 1975 when it was learnt that she was employed as a part time cleaner at a local factory. The adjudication officer then reviewed the decisions awarding invalidity benefit to her from 21 November 1983 to 16 July 1984 (both dates included). His revised decision was to the effect that invalidity benefit was not payable to her for the period 21 November 1983 to 23 February 1984 (both dates included) because she "was not incapable of work by reason of some specific disease or bodily or mental disablement and the deeming of incapacity is not appropriate.", that sickness benefit was not payable to her from 24 February 1984 to 27 February 1984 (both dates included) because these were "waiting days", but that it was payable to her from 28 February 1984 to 16 July 1984 (both dates included). He directed that of the £947 paid to the claimant as invalidity benefit from 28 February 1984 to 16 July 1984 (both dates included) £522 was to be treated as having been paid on account of the sickness benefit he awarded her. He also decided that an overpayment of benefit amounting to £1095.26 had occurred and that repayment of this sum by the claimant was required. The claimant's appeal from these decisions to the appeal tribunal, which she attended and at which she was represented, was disallowed. She has now appealed to the Commissioner, having been given leave to do so by me. Her representatives (the local Citizens Advice Bureau) intimated on 12 December 1985 following the receipt of the adjudication officer's submission to the Commissioner that they had no further observations to make. In his submission to the Commissioner the adjudication officer tends to support the claimant's appeal.
3. According to the officer of the Department of Health and Social Security who interviewed the claimant on 7 June 1984 the claimant admitted that she had worked during the relevant period, namely 21 November 1983 to 23 February 1984 (both dates included), that when working she had used her maiden name to avoid detection and that she was aware that she was required to report changes in her

situation to the Department of Health and Social Security. There is no dispute that she did not report the fact that she was working. She also made a written statement to the effect that "I worked at R... W...., because I suffer with nerves and depression and it got me out of the house for an hour. I needed shoes and clothes for my daughter." On 3 July 1984 she stated that she had worked from 5.30 to 7.30 p.m. for 5 nights a week. She also stated that "My doctor did not directly recommend that I should work part-time but at the time I did it both for the money and to have a change of environment out of the house. I think my doctor would have agreed with this." Her doctor provided a statement on 30 July 1984 to the effect that the claimant was treated by him for depression in November 1983 and that "She was advised to take a small evening job to meet with other people. She did in fact work in the evening from 15 Nov 1983 to 15 Feb 1984." In October 1984 he provided a further statement to the effect that she "was treated by me for a number of years complaining of depression she was advised to seek a job as a means of physiotherapy in November 1983. Finally she had to give it up after 2 1/2 months because her nerves became worse." In her grounds of appeal to the appeal tribunal she stated that "As my doctor told me to take a small part time job for therapeutic reasons and depression, I did not know at the time that a letter had to be sent in." At the hearing before the tribunal her representative spoke of "permissible therapeutic work."

4. I am satisfied that the adjudication officer was entitled to carry out the review undertaken by him as the decisions awarding benefit for the relevant period were given in ignorance of a material fact, namely the fact that the claimant was working during this period. I am also satisfied that she has to be regarded as having been capable of work throughout the relevant period. Despite the fact that the medical evidence is to the effect that she was incapable of work she demonstrated that she was capable of work throughout this period by being engaged in the work which on her own admission was carried out by her. The question which now arises is whether she should nevertheless be deemed to have been incapable of work during this period by reason of the provisions of regulation 3(3) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 which provide that:

"(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 £2.50 a week."

5. I am satisfied that the requirements set out in regulation 3(3)(i) are not fulfilled and that before the claimant may be deemed to have been incapable of work during the relevant period the work undertaken by her has to have been work which she had good cause for doing and from which her earnings did not ordinarily exceed the prescribed limit. There is no dispute, and I accept, that they did not exceed this limit.

6. There are features in the case which lend support to the assertion that the claimant had good cause for doing the work done by her. She suffered from nerves and depression. She clearly thought it would be beneficial to her health as "it got me out of the house for an hour". Her doctor has stated that she was advised to take a small evening job to meet with other people and as "a means of physiotherapy". Unfortunately it proved otherwise. Her nerves became worse and she had to give up doing this work 2½ months later. On the other hand she made a stupid attempt to conceal the fact that she was doing this work and has also signed a statement to the effect that her doctor did not "directly recommend" that she should do this work although she believed he would have approved of her doing it. After considerable hesitation I have come to the conclusion that on balance it should be accepted that she had good cause within the meaning of regulation 3(3)(ii) for doing this work and that accordingly she should be deemed to have been incapable of work during the relevant period. My decision is therefore that set out in paragraph 1.

7. The claimant's appeal is allowed.

(Signed) E Roderic Bowen  
Commissioner  
Date: 18 December 1985