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SOCIAL SECURITY ACTS 1975 TO 1977

CLAIM FOR WIDOWS BENEFIT

DECISION OF THE NATIONAL INSURANCE COMMISSIONER

Name: Janet Glew (Mrs)

Local Tribunal: Doncaster

Case No: 17/1

Pension No: 29121081

1. My decision is that the decisions awarding to the claimant widow's allowance for the inclusive period 5 October 1976 to 4 April 1977 and widowed mother's allowance from and including 5 April 1977 should not be revised on review.
2. This is an appeal by the claimant from a decision of the local tribunal in which they held that the decisions making the above-mentioned awards in the claimant's favour should be revised on review so as to provide that widow's allowance was not payable to her for the inclusive period 15 March to 4 April 1977 and widowed mother's allowance was not payable to her for the inclusive period 5 April to 10 October 1977. And they required the claimant to repay £617.58 which they held to have been overpaid to her.
3. The local tribunal expressly decided that the claimant again became entitled to widowed mother's benefit from and including 11 October 1977. The present appeal is therefore concerned with the inclusive period 15 March to 10 October 1977 and no longer.
4. The claimant has requested an oral hearing of her appeal but I refuse this request for reasons which this decision will make obvious.
5. The claimant, a woman now aged 36, was widowed on 3 October 1976 and left with two sons. Widow's allowance with earnings related addition was awarded to her for the inclusive period 5 October 1976 to 4 April 1977, followed by widowed mother's allowance from and including 5 April 1977. Both benefits were paid to her at the maximum permitted rates and included an increase in respect of one dependent child.
6. In March 1977 the claimant met a Mr S. in a public house and befriended him. It appears that his marriage had broken up and he had no home and had been sleeping rough in his car. The claimant

took him into her house on a date which has been taken as 15 March 1977. Information was subsequently received at the local office of the Department of Health and Social Security which caused an investigation to be made for the purpose of deciding whether the claimant "and a man to whom she was not married were living together as husband and wife": see proviso to section 24(2) and proviso to section 25(3) of the Social Security Act 1975 as amended. The local insurance officer concluded that this had been the case since 15 March 1977 and on 19 September 1977 gave the review decision the substance of which the local tribunal upheld.

7. I will quote in full the first statements made respectively by the claimant and by Mr S. because they contain most of the facts on which the local tribunal reached their decision. The claimant made the following statement on 9 May 1977:-

"Mr S. came to live in my house as near as I can say in about mid March. He lodges here and pays me £10 per week board. I do his washing and ironing along with my sons and my own. Sometimes we take our meals together if he happens to be in, but otherwise he eats separately. Sometimes we go out together, but I don't always go out with him. He sleeps with my seventeen year old son. I own the house and its contents and meet all the household expenses. On occasions I have had sex with Mr S. but not on a regular basis. I have no intention of marrying Mr S."

The statement made by Mr S is dated 16 May 1977 and is as follows:-

"I came to lodge with the claimant about the end of the first week in March this year. I had been sleeping rough in the car. I happened to meet her in a pub and she must have felt sorry for me, so she offered me digs. I pay £10 per week full-board which includes my laundry. If my presence here is going to cause the claimant embarrassment I would move on. I do not sleep with the claimant, but with her seventeen year old son. We are just friends and I have no intention of marriage to her."

8. Both those statements were taken by an inspector of the Department of Health and Social Security and he himself made a statement dated 20 May 1977. In his statement he repeated the facts contained in the two above-quoted statements and included additional facts. He stated that the claimant and Mr S. were not shown as man and wife on the electoral register, on which the name of Mr S. did not appear. Nor did they represent themselves as man and wife in any other way. The claimant was known locally under her own name and she and Mr S. were not known by neighbours as a married couple. The house where the claimant lives and its contents belong to her. It is a "3 bedroomed semi", which has three downstairs rooms, including the kitchen. Mr S. slept with the claimant's seventeen year old son, she slept alone and the third bedroom was occupied by her younger son D. The only household duties provided by the claimant apart from meals

were the laundry and mending of work clothes, which services were provided for in the £10 per week board. There were no arrangements for the pooling of resources, and the claimant was stated by the inspector to be "quite wealthy and has really no need of financial assistance in the shape of income from a lodger". The inspector further stated that the claimant and Mr S. occasionally went out together but not very often. The claimant, he said, had her own "boy friends". She admitted to having had sexual relations with Mr S. on the odd occasion, but no more. Both were adamant that there was no desire or intention to marry and there were no children of their association.

9. It has never been an easy matter to deal with cases such as this, which raise the question whether a man and woman who are not married are living together as husband and wife (it used to be called "co-habiting"). It certainly used to be the case that evidence of sexual relations between them was a strong pointer towards a finding that they were so living together: see, for example, the Commissioner's Decision R(G) 5/68. But, in my view, the alteration in moral ideas concerning sexual relations between a man and woman who are not married has much weakened this pointer towards such a conclusion. In the present case, a further fact has come to light which, in my view, converts the evidence concerning sexual relations between the claimant and Mr S. from a factor supporting the conclusion that they were living together as man and wife into a factor to the opposite effect. The claimant told the local tribunal that she never shared a bed with Mr S.; intercourse took place in his car. She has since repeated this in writing and giving more detail. This seems to me a candid statement which I would be wrong to reject. And further, it seems to me that it points against the conclusion that the claimant and Mr S. were living together as man and wife. If I heard of a married couple living under the same roof who, when they had sexual relations, only did so in a car, I would regard their behaviour as distinctly eccentric.

10. It was submitted by the local insurance officer to the local tribunal that the weekly sum of £10 which Mr S. paid to the claimant was not a realistic amount for a lodger to pay and therefore pointed to a relationship closer than that between a lodger and landlady. He has also submitted that the evidence that Mr S. slept in a bedroom with the claimant's seventeen year old son indicated that the claimant did not have the necessary room in her home in which to accommodate a lodger, and that her acceptance of Mr S. in her home was not based on any commercial arrangement but was the result of her close personal relationship with him.

11. As to the amount which Mr S. paid to the claimant, the claimant has produced evidence from an Institute of Higher Education stating that in the year 1977 the amount generally charged by landladies for a shared room for 7 days, supplying bed, breakfast and light supper daily, with lunch or tea on Saturday and all meals Sunday was £9.50-£11.50. No doubt they were referring to arrangements made with students, but their letter is some confirmation that the £10 per week

paid by Mr S. to the claimant was somewhere near the "going rate". The other part of the local insurance officer's submission on this point I regard as far-fetched in the extreme. It is clear from the evidence both of the claimant and of Mr S. that she took him into her house because he had nowhere to live. It is not possible to conclude that when she did so there was a "close personal relationship" between them, as alleged by the local insurance officer. I reject this part of his submission wholly.

12. I find, therefore, that there really is no evidence that the claimant and Mr S. lived together as man and wife. Their sexual relationship, such as it was, is inconsistent with a relationship of man and wife. They did not pool their resources. They did not hold themselves out to the neighbourhood or the general public as man and wife. There is no evidence that the claimant's sons regarded Mr S. as a member of the family. When Mr S. realised that his presence in the claimant's household might be embarrassing her, he moved out and went to live with his parents. This he did finally on 10 October 1977. And both were at all material times insistent they had no intention of marrying.

13. In my view, there is really no evidence in this case justifying the local tribunal's decision that the claimant and Mr S. were living together as man and wife.

14. Accordingly I reject the local tribunal's conclusion and allow this appeal. The claimant is, as a result of my decision, held to be not disentitled to the widow's allowance or the widow's mother's allowance referred to in paragraph 1 above, and no grounds exist for requiring her to repay any overpaid benefit.

15. The appeal is allowed and I give the decision set out in paragraph 1 above.

(Signed) R S Lazarus
Commissioner

Date: 6 April 1979

Commissioner's File: C.G. 2/1979
C I O File: I.O. 1686/W/78
Region: Yorkshire and Humberside