

CA 99/79

DGR/OFB

SOCIAL SECURITY ACTS 1975 TO 1979

CLAIM FOR WIDOWS BENEFIT

DECISION OF THE NATIONAL INSURANCE COMMISSIONER

Name: Beryl Lilian Read (Mrs)  
(formerly Jeffrey)

Local Tribunal: Lewisham and District

Case No: 49/03

Pension No: 16111048

1. My decision is that the original decision of the insurance officer awarding widowed mother's allowance from and including 10 October 1972 should in respect of the inclusive period from 3 August 1976 to 24 January 1977 be reviewed, but not revised, and accordingly this appeal succeeds.

2. The claimant, now aged 39, was widowed on 6 April 1972, and was awarded widowed mother's allowance from and including 10 October 1972. However, as a result of an anonymous telephone call to the Department suspicion was aroused that the claimant was living with a man as his wife, and investigations were conducted into the matter. It transpired that a certain Mr F was staying at the house of the claimant and had been there since 3 August 1976. In the event he remained until 24 January 1977. Mr F, who at that time was separated but not divorced from his wife, had made the acquaintance of the claimant at a divorced and separated club. About July or August 1976 he started to stay the occasional night at the claimant's house, and from 3 August 1976 onwards he stayed on a permanent basis, that is until January 1977. He paid £20 per month "for his keep", and it is not in dispute that there was a sexual relationship between him and the claimant. However Mr F normally slept on a settee in the living room. There were 2 other bedrooms in the house, one occupied by the claimant and the other by the claimant's 2 children. Mr F had his meals generally at work during the week, but he ate with the family at weekends. He shared washing up duties, and it is admitted that he did some interior decorating work. On rare occasions he looked after the claimant's children. Some leisure time was spent together by the claimant and Mr F.

3. In the light of the evidence the insurance officer took the view that there has been a material change of circumstances since his original decision had been given awarding widow's benefit, and in respect of the period from 3 August 1976 to 24 January 1977 he made a revised decision to the effect that such benefit was not payable for that period because the claimant and a man to whom

she was not married were living together as husband and wife. Further, he required repayment of the sum of £659, representing the amount of widowed mother's allowance overpaid, not being satisfied that the claimant had throughout used due care and diligence to avoid such overpayment. After an unsuccessful appeal to the local tribunal the claimant now appeals to the Commissioner.

4. I am quite satisfied that in the circumstances of the case the insurance officer properly revised his original decision in respect of the period from 3 August 1976 to 24 January 1977. The real question at issue is whether or not a revised decision was called for. The proviso to section 25(3) of the Social Security Act 1975 provided that widowed mother's allowance was not payable for any period during which a widow was cohabiting with a man as his wife. Section 22(2) of the Social Security (Miscellaneous Provisions) Act 1977 amended those sections of the Social Security Act where the words "she is cohabiting with a man as his wife" appear and substituted therefor the words "she and a man to whom she is not married are living together as husband and wife". However, it would appear that the new wording does not call for a different interpretation. Accordingly, in reading Commissioners' decisions "cohabiting" should be taken as having the same meaning as "living together". In decision CG214/50 (KL) the Commissioner said that "a woman is cohabiting with a man as his wife, if she and he are carrying on a common home in the manner in which husbands and wives do". The Commissioner added "in determining this question it is their general relationship which has to be looked at. Neither their habits with relation to sexual intercourse, nor the manner in which the common household fund from which they are maintained is spent or provided are conclusive". In decision R(G) 3/71 the Commissioner said "it is generally accepted that the question of whether a woman is cohabiting with a man as his wife within the meaning of the statute requires an examination of 3 main matters:

- (a) their relationship in relation to sex;
- (b) their relationship in relation to money; and
- (c) their general relationship.

Although all 3 are as a rule relevant, no single one of them is necessarily conclusive".

5. In the present case it is a strong point against the claimant that there was a sexual relationship between her and Mr F. However, this is not in itself conclusive. As regards their relationship in connection with money, here I think the evidence is strongly in favour of the claimant. Mr F was not contributing to any general fund in discharge of the expenses of the household; he was merely making a payment of £20 per month "for his keep".

The claimant was the owner of the house and she discharged all outgoings. She argues that the claimant was in fact a lodger. I think she is putting her case rather too low. For a lodger is someone who normally pays what the market will bear for the particular room and for the services provided. Now £20 per month is, in my judgment, not particularly high, and the evidence is that this figure was arrived at as a means of relieving the claimant from any burden arising from the extra expenditure created by the presence of Mr F. For £20 per month was thought to be roughly adequate to defray the cost of the meals which Mr F consumed. Although he is described as a lodger, I think his position is more analogous to a guest who wishes to relieve his host of any extra cost entailed by his stay. Certainly, on no footing could it be said that he was making any contribution to the general cost of the household. All that he was doing was at best avoiding being a financial liability.

6. As regards the general relationship between the claimant and Mr F, this seems to have been very limited. There was certainly no stable relationship - shortly after he left in January Mr F, then having obtained his divorce, married someone else, and in the intervening time between the hearing before the local tribunal and the appeal to the Commissioner the claimant has herself married a certain Mr Read. Apparently there was some vague talk of the claimant and Mr F getting married, but it does not appear to have been taken seriously, at least by the claimant. They were not regarded by tradesmen, neighbours or friends as "a couple", and they had their separate friends. Certainly Mr F took no interest in the children, apart from the very occasional "baby minding", a thing which any guest might do, and the children certainly did not regard him as their "father". He was "one of mum's friends who were staying for a while". Their general relationship has been more particularly set out in the submissions by the Plumstead Community Law Centre on behalf of the claimant, and I have no reason to doubt the accuracy of that summary.

7. Although, as I have said, it is against the claimant that there was, whilst Mr F resided at her house, a sexual relationship, there is no precise evidence as to the extent of it, but even if such relationship was frequent, this in itself is not conclusive of the present matter. Taking the evidence as a whole, I am not satisfied that the true relationship between the claimant and Mr F was that of persons who were living together as husband and wife. In my judgment, the status of Mr F was more akin to that of a guest, who was paying his way, and was concurrently carrying on to some extent a sexual relationship with his hostess. This is, of course, something of a borderline case, but on balance I am not satisfied that there was cohabitation throughout the relevant period.

8. It follows from what has been said above that no question of repayment arises.

9. Accordingly, I allow this appeal.

(Signed) D G Rice  
Commissioner

Date: 14 May 1980

Commissioner's File : C.G. 99/79  
C I O File : I.O. 2585/W/78  
Region: London South