

SCOTT

DGR/SH/3

Commissioner's File: CS/177/1988

SOCIAL SECURITY ACTS 1975 TO 1986

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: [REDACTED]

Appeal Tribunal: Durnam

Case No: [REDACTED]

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 1 March 1988 is erroneous in point of law, and accordingly I set it aside. However, as it is expedient that I give the decision the tribunal should have given, I further decide that invalidity benefit is payable for the inclusive period from 16 June 1987 to 23 February 1988.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the majority decision of the social security appeal tribunal of 1 March 1988.

3. The claimant had been in receipt of invalidity benefit since 6 March 1986 when in accordance with normal practice she was on 8 April 1987 examined by an examining medical officer of the Department of Health and Social Security, who expressed the opinion that the claimant was not incapable of her regular occupation as an assembly worker. However, the claimant's own doctor issued a further medical statement, advising her to refrain from work by reason of palindromic rheumatism, and accordingly the claimant was on 28 May 1987 examined by a different examining medical officer of the Department. The latter reported that, in his view, the claimant was capable of her normal occupation. Nevertheless, the claimant's own doctor continued to issue medical statements, advising her to refrain from work. On 25 June 1987 the adjudication officer, in the light of the evidence, disallowed invalidity benefit from 16 June 1987 to 4 July 1987. In due course, the claimant appealed to the tribunal, but before the matter was heard, the opportunity was taken by the adjudication officer of referring to that body for adjudication the further period from 6 July 1987 to 23 February 1988.

4. In the event, the majority members of the tribunal upheld

the adjudication officer, and disallowed benefit for the period referred. The majority gave as the reasons for their decision the following:-

"Having seen and heard the claimant the majority of the tribunal considered that she is capable of some work. While noting the medical evidence she submits they also note that she dusts, hovers, walks to the shops and walks to her sister's home, travels one hour each way on a bus twice a week. If she is capable of these activities she is capable of work."

Presumably, the majority members had in mind the claimant's normal work as an assembly worker.

5. In Decision R(S) 11/51 a Tribunal of Commissioners, after pointing out that work in the present context constitutes remunerative work, i.e. something for which an employer would be willing to pay, said at paragraph 6:-

".... a woman living alone in a small house or flat might be able to cook her own food and make her own bed and yet that would not be sufficient reason for inferring that she was capable of remunerative work, because for so limited a performance of work no employer would normally be expected to engage and remunerate her."

Although the claimant was able to dust, Hoover, walk to the shops and sit on a bus for two hours twice a week, I find it difficult to see how that in itself was sufficient evidence to reach the conclusion that an employer would be willing to offer the claimant remunerative work. Moreover, as a further difficulty, it came out in the evidence that the claimant was obliged to attend hospital on two days a week for physiotherapy treatment. In this connection it is helpful to remember what was said at paragraph 8 of CS/69/50 (KL):-

"....it is clear that on certain days the hospital authorities thought it essential for [the claimant] to come for treatment of a bodily disablement, and therefore on those days she was incapable of work by reason of bodily disablement."

Accordingly, if, in the present case, I take into account the claimant's inability to do work on 2 days together with the limited activities relied on by the tribunal, I do not see how the tribunal's conclusion can properly be upheld. In my judgment the tribunal acting judicially could not reasonably have, on the evidence, reached the conclusion they did. Accordingly, I must set aside their decision.

6. However, I do not think it is necessary for me to remit this matter to a new tribunal for rehearing. All the evidence is before me, and I can conveniently substitute my own decision. As explained above, I do not think the evidence of the claimant's various activities undertaken by her is sufficient justification

for inferring that she was capable of her old employment or, for that matter, any alternative employment. However, I must bear in mind the medical evidence, which is weighted against the claimant. But against that, I have been informed that the claimant continued to claim benefit, and her claim was allowed from 24 February 1988. Sickness benefit was awarded to her from 27 February 1988, followed by invalidity benefit from 7 September 1988. I am also informed that on 18 August 1988 the claimant was examined by a medical officer of the Department who expressed the opinion that the claimant was incapable of work, and should not be referred again for examination for 12 months. Now, I find it somewhat surprising if the claimant, who was incapable of work prior to 16 June 1987, and was likewise incapable of work from 24 February 1988, had suddenly in the intervening period sufficiently recovered to be able to resume her old, or any alternative, employment. On the balance of probability I find this unlikely. Accordingly, looking at the medical evidence as a whole, I do not think that it supports the view that the claimant was capable of work throughout the relevant period. Moreover, there is no other evidence to establish her capacity for remunerative employment for that period. Accordingly, I am satisfied that the claimant was incapable of work for the inclusive period from 16 June 1987 to 23 February 1988, and that invalidity benefit should be payable therefor.

7. My decision is as set out in paragraph 1.

(Signed) D.G. Rice
Commissioner

(Date) 23 April 1990