MATERNITY BENEFIT

Contribution conditions—the determination of questions by the Secretary of State and the statutory authorities.

The insurance officer decided maternity allowance was not payable from 23.4.78 to 26 8 78 because the claimant had paid insufficient contributions in the tax year ending 5.4 76 The contribution record was not disputed but the claimant contended that 3 earlier claims on medical statements (forms Med 3), which had the effect of "linking" periods of interruption of employment under section 17 of the Social Security Act 1975, were not intended as claims for benefit If there were no "linking" of periods the "relevant past year" would be the tax year 1976/77 in which the claimant paid full contributions.

The appeal was heard by a Tribunal of Commissioners because of a separate contention on behalf of the Secretary of State that the issue whether by force of the "linking" provisions the relevant past year is the tax year 1975/76 or 1976/77 fell to be determined by the Secretary of State.

Held by the Tribunal that·—

1. all matters specified in sub-paragraph (4) of paragraph 3 of Part 1 of Schedule 3 to the 1975 Act ["the relevant time", "the relevant past year" and "the relevant benefit year"] are to be determined by the statutory authorities and not by the Secretary of State (paragraph 14);

2. where a question arises for determination by the Secretary of State the reference should be in relation to a given tax year or years pre-determined by the statutory authority making the reference (paragraph 19),

3. since the claimant knew that her employers submitted all forms Med 3 received by them to the Department she is unable to establish she had not intended to claim in respect of the earlier periods of incapacity (paragraphs 25 and 29);

4 the "relevant past year" is the tax year 1975/76 and consequently the claimant is not entitled to maternity allowance (paragraph 1)

1. Our decision is as follows:

(i) "The beginning of the maternity allowance period" in respect of the claim made on 19 January 1978 is 23 April 1978 which latter date is therefore "the relevant time" within the meaning of Schedule 3, Part I, paragraph 3(2) and (4) of the Social Security Act 1975.

(ii) "The beginning of the period of interruption of employment which includes the relevant time" (Social Security Act 1975 Schedule 3, Part I, paragraph 3(4)(c)) is 9 December 1977 and consequently "the relevant past year" is the tax year ending on 5 April 1976; Social Security Act 1975 section 13(6) and (7) and Schedule 3, Part I, paragraph 3(4).

(iii) Consequently, as the claimant is stated by the Secretary of State not to have either paid or been credited with contributions of a relevant class in the relevant past year (1975/76—see above) and the claimant does not dispute that fact the claimant is not entitled to maternity allowance for the inclusive period from 23 April 1978 to 26 August 1978: Social Security Act 1975 sections 13, 98, and 103 and Schedule 3, Part I, paragraph 3; Social Security (Determination of Claims and Questions) Regulations 1979, regulation 9(1).

The claimant's appeal against the decision of the local tribunal, is therefore dismissed.

2. The hearing of this appeal before a Tribunal of Commissioners took place on 15 September 1981. The claimant was present but not represented. The Secretary of State for Social Services was represented by Mr Compton of the Solicitor's Office of the Department of Health and Social Security, and the Insurance Officer was represented by Mr James also of that Office. Shortly stated, the practical issue in this appeal as between claimant and insurance officer is whether by force of the linking provisions of section 17 of the 1975 Act the relevant past year (see paragraph 1(ii) above) is the tax year 1975/76 or 1976/77. But we are concerned also with a separate contention on behalf of the Secretary of State namely that that issue is one not proper for our decision as falling within the jurisdiction assigned by the Act to the Secretary of State.

3. The claimant is a married woman now aged 31 who, until 29 April 1978, was a part-time nurse at a hospital, working on Friday and Saturday nights in each week. On 19 January 1978, she submitted a claim for maternity allowance which was followed on 26 May 1978 by a certificate of expected confinement (form MAT B1) signed by the doctor, stating that in his opinion the claimant could expect to be confined in the week which would include 15 July 1978. Consequently, under section 22(2) of the Social Security Act 1975, the "maternity allowance period" in her case was the inclusive period from 23 April 1978 to 26 August 1978. As the claimant worked up to and including 29 April 1978, maternity allowance is not payable in any event for the inclusive period from 23 April 1978 to 29 April 1978 (Social Security (Maternity Benefit) Regulations 1975, regulation 9(1)).

4. On 26 May 1978, the local insurance officer gave the following decision,

> "Maternity allowance is not payable from 23.4.78 to 26.8.78 (both dates included) because the earnings factor derived from contributions of a relevant class paid by or credited to the claimant in the relevant year which ended on 5 April 1976 is less than 25 times the lower earnings limit for that year".

As it was not disputed that the claimant had insufficient contributions (indeed no contributions) in the tax year ending on 5 April 1976, we consider that the insurance officer was empowered to arrive at a decision in that form by the Social Security (Determination of Claims and Questions) Regulations 1979, regulation 9(1) (set out in paragraph 15 below). The local tribunal on 15 November 1978 upheld the local insurance officer's decision, and the claimant appealed to the Commissioner.

5. The reason why the tax year ending on 5 April 1976 (in which the claimant had no relevant contributions) was relevant to a claim for maternity allowance for the inclusive period from 30 April 1978 to 26 August 1978 was because of the "linking" provisions, relating to periods of interruption of employment, contained in section 17 of the Social Security Act 1975. Those "linking" provisions are applied by Schedule 3 (Part I, paragraph 3) of the Social Security Act 1975 to the contribution conditions for maternity allowance. Before we deal with the factual questions involved in "linking" of periods of interruption of employment, we must deal with the contention advanced to us by Mr Compton (and supported by Mr James) that none of these matters are within the purview of the statutory authorities, i.e. the local insurance officer, the local tribunal and the Commissioner, but must be the subject of what Mr Compton termed an "umbrella" reference under section 93 of the Social Security Act 1975. It was because of this point that the Chief Commissioner directed that this appeal should be heard by a Tribunal of Commissioners and we therefore proceed at once to deal with this preliminary question of jurisdiction.

6. Section 93 of the 1975 Act (as amended) provides as follows,

"93(1) Subject to this Part of this Act, any of the following questions arising under this Act shall be determined by the Secretary of State—

(a) a question whether a person is an earner and, if he is, as to the category of earners in which he is to be included;

(b) subject to sub-section (2) below, a question whether the contribution conditions for any benefit are satisfied, or otherwise relating to a person's contributions or his earnings factor;

(c) .....

(d) a question whether a person is or was employed in employed earner's employment for the purpose of Part II, Chapter IV and V; [Industrial injuries and diseases];

(e) a question as to whether a person was, within the meaning of regulations, precluded from regular employment by responsibilities at home.

(2) Sub-section (1)(b) above includes any question arising—

(a) under section 9(7) of this Act as to whether by regulations under that sub-section a person is excepted from liability for Class 4 contributions, or his liability is deferred; or

(b) under regulations made by virtue of section 9(9) or 10;

but not any other question relating to Class 4 contributions, nor any question within section 98(1)(c) (disqualification for unemployment benefit, etc.).

(3) The Secretary of State may, if he thinks fit, before determining any question within sub-section (1) above, appoint a person to hold an inquiry into the question, or any matters arising in connection therewith, and to report on the question, or on those matters, to the Secretary of State."

Section 94 gives a right of appeal from a question of law arising in connection with the determination by the Secretary of State of any question under section 93(1), and also provides that the Secretary of State of his own accord may refer any such question of law to the High Court.

7. It was urged by Mr Compton (supported by Mr James) that in this case a question had arisen under section 93(1)(b) of the 1975 Act and therefore should be determined by the Secretary of State, namely the "question whether the contribution conditions for any benefit are satisfied". It was not suggested that the question came within the remaining words of section 93(1)(b) of the 1975 Act, viz "or otherwise relating to a person's contributions or his earnings factor", which Mr Compton stated were regarded as being confined to a question relating to credits for contributions. Mr Compton and Mr James both argued that all the matters for determination in this case constituted a question arising under section 93(1)(b) of the Act, in that they all came within Schedule 3, Part I, paragraph 3 of the 1975 Act. Schedule 3 is headed

> "CONTRIBUTION CONDITIONS FOR ENTITLEMENT TO BENEFIT
> PART I
> THE CONDITIONS"

Paragraph 3 of Part I of Schedule 3 provides as follows,

> *"Maternity allowance*
> 3(1) The contribution conditions for a maternity allowance are the following,
>
> (2) The first condition is that—
>
> (a) the claimant must in respect of any one year have actually paid contributions of a relevant class, and those contributions must have been paid before the relevant time; and
>
> (b) the earnings factor derived from those contributions must be not less than that year's lower earnings limit multiplied by 25.
>
> (3) The second condition is that—
>
> (a) the claimant must in respect of the relevant past year have either paid or been credited with contributions of a relevant class; and
>
> (b) the earnings factor derived from those contributions must be not less than that year's lower earnings limit multiplied by 50.
>
> (4) For the purposes of these conditions—
>
> (a) 'the relevant time' is the beginning of the maternity allowance period; and
>
> (b) 'the relevant past year' is the last complete year before the beginning of the relevant benefit year; and
>
> (c) 'the relevant benefit year' is the benefit year in which there falls the beginning of the period of interruption of employment which includes the relevant time".

By force of section 13(6)(d) of the 1975 Act, "year" (save in the expression "benefit year") means a tax year. It was not disputed that in respect of the tax year 1975/76 the claimant had neither paid nor been credited with contributions of a relevant class, and consequently for that tax year could not fulfil the second condition contained in paragraph 3(3). Equally, it was not disputed that in the tax year 1976/77 the claimant had sufficient contributions to comply with both conditions in paragraph 3(3).

8. It was argued by Mr Compton and Mr James that all the matters contained in paragraph 3 set out in paragraph 7 above, including e.g. the question when a period of interruption of employment began, were, under section 93(1)(b) of the 1975 Act (see paragraph 7 above), within the exclusive jurisdiction of the Secretary of State as being comprised in the question "whether the contribution conditions for any benefit are satisfied" (1975 Act, section 93(1)(b)). The argument on behalf of the Secretary of State and the insurance officer, as we understood it, was as follows. By force of section 93(1)(b) the question whether the contribution conditions for any benefit are satisfied is for determination by the Secretary of State: in the present case determination of that question involves determining which of two tax years is the relevant year: and that question in turn depends on how, in this case, the "linking" provisions, referred to above, operate. All those matters, so the argument ran, fall to be determined by the Secretary of State since they all form part of the question whether the claimant satisfies the contribution conditions. We reject this argument. In our judgment the true view is that you cannot know whether a contribution question within the scope of section 93(1)(b) arises, or what that question is, until you know which is the relevant tax year. Any controversy on that question must be resolved by the statutory authorities, i.e. insurance officer, local tribunal and Commissioner.

9. The proper construction of the phrase "a question whether the contribution conditions for any benefit are satisfied" as used in section 93(1)(b) of the 1975 Act has, in accordance with the established principles of construction, to be arrived at with due regard to the context constituted by the 1975 Act as a whole, and not in isolation. Materially, sections 98(1), 100(1) and 101(1) of the 1975 Act together operate to establish a jurisdiction and appellate structure for the broad generality of issues capable of arising between a claimant and the State in reference to benefits under the 1975 Act, but with stipulated exceptions as to which the jurisdiction is consigned elsewhere. Thus section 98(1) of the Act puts under the *general* jurisdiction:

> "(a) any claim for benefit;
>
> (b) subject to sub-section (2) below, any question arising in connection with a claim to, or award of, benefit; and
>
> (c) any question whether a person would by reason of the provisions of, or of any regulations under, section 20(1) or (2) of this Act have been disqualified for receiving unemployment benefit, sickness benefit or invalidity benefit if he had otherwise had a right thereto"

—but sub-section (2) then refers to certain specific exceptions to that generality, viz.

> "(2) Sub-section (1) above does not apply—
>
> (a) to a question for determination by the Secretary of State under section 93 or 95 of this Act, or by the Attendance Allowance Board under section 105(3); or
>
> (b) to the disablement questions (section 108) in relation to industrial injuries benefit".

10. Thus whilst under section 13(1) of the 1975 Act entitlement to maternity allowance "depends on contribution conditions being satisfied" (as indeed does every "contributory" benefit under the 1975 Act) the scope of what is embraced by the phrase, in section 93(1)(b) of the 1975 Act,

> "a question whether the contribution conditions for any benefit are satisfied"

has to be read in the light of the provisions referred to above; and so read carries, in our view, the sense which is exemplified by the attribution of emphasis thus:

> "a question whether the *contribution* conditions for any benefit are satisfied".

11. That such is the correct and intended construction is confirmed by section 114(3) of the 1975 Act, which when dealing with the power to make regulations as to determination of questions expressly provides (emphasis supplied by us):

> "114(3) As respects any question as to the right to benefit (other than a question for determination by the Secretary of State under section 93 or 95 of this Act) regulations ... *shall not provide for the determination of that question by the Secretary of State* but ... shall provide [for submission of the questions to the statutory authorities]".

12. In considering the intendment of section 93(1)(b) of the 1975 Act we think it material to take into consideration also that amongst the important administrative functions of the Department of Health and Social Security for which the Secretary of State is ultimately responsible is the maintenance of proper records of the contributions made by and in respect of individual contributors to the National Insurance Fund, so that ascertainment as to whether a particular contributor has or has not established a prescribed level of contributions in a stipulated period is clearly a question of particular suitability to be determined by the Secretary of State, and will not in most cases give rise to the character of controversies of law or fact for the resolution of which any elaborate machinery of adjudication is required.

13. So far as the actual construction of section 93(1)(b) of the 1975 Act is concerned, i.e. "a question whether the contribution conditions for any benefit are satisfied", we consider that this is limited to a question arising under sub-paragraphs (1), (2) and (3) of paragraph 3 of Part 1 of Schedule 3 to the 1975 Act. The whole of paragraph 3 is set out in para 7 above, and it will be seen that sub-paragraphs (1), (2) and (3) relate to what are termed the first and second contribution conditions i.e. the actual contributions paid or credited, of what class they are, and how many of them there are in a given period. Sub-paragraph (4) of paragraph 3, the interpretation of which we consider to be a matter for the statutory authorities and not the Secretary of State, begins "For the purposes of these conditions" and does not itself specify the conditions themselves. Moreover, the matters specified in sub-paragraph (4) are all factual matter, e.g. what date is the "beginning of the maternity allowance period" and what is the "relevant benefit year". Those matters involve consideration of a problem commonly adjudicated on by the statutory authorities in a number of other contexts arising under the 1975 Act, as to none of which is it suggested that it constitutes a "Secretary of State's question". Indeed it would be surprising, to put it no higher, were the same question under the Act to be the subject of divided jurisdiction according to the context in which it arises.

14. All matters specified in sub-paragraph (4) of paragraph 3 of Part I of Schedule 3 to the 1975 Act are, in our view, to be determined by the statutory authorities and not by the Secretary of State. They may depend on interpretation of evidence written or oral that may have to be the subject of an oral hearing, and which may depend on an assessment by the statutory authorities of conflicts of evidence, cross-examination of witnesses etc. In relation to Class 4 contributions, for example, section 93(2) of the 1975 Act is careful to make it clear that the Secretary of State's adjudication is only on certain questions in relation to those contributions and not "any other

question relating to Class 4 contributions", which in our view is another indication that in relation to contributions the legislature intended to confine Secretary of State's questions to those (record-related) questions which were within his exclusive competence or knowledge, and which the statutory authorities could decide only upon and in accordance with information supplied by the Secretary of State. That clearly is not the position with regard, for example, to the matters mentioned in paragraph 3(4) of Part I of Schedule 3 of the 1975 Act (see paragraph 7 above) as to the beginning of the maternity allowance period and of the period of interruption of employment. Moreover, under section 100(3) of the 1975 Act, where an insurance officer certifies that his decision is based solely on a decision by the Secretary of State of a question under sections 93 or 95 of the 1975 Act, no appeal lies to a local tribunal "without leave of the chairman of the local tribunal" (section 100(3)). This again indicates that it was recognised by the legislature that the questions for reference to the Secretary of State under section 93 are narrow in their compass. Consequently, the chairman of the local tribunal should have the power to give leave to appeal to that tribunal where, for example, it is problematical whether a question was properly within the exclusive competence of the Secretary of State, even though the local insurance officer and the Secretary of State had considered that it was.

15. We are also reinforced in the construction we have placed upon section 93(1) of the 1975 Act by the circumstance that regulation 9(1) of the Social Security (Determination of Claims and Questions) Regulations 1975 has plainly been framed in the same contemplation. That regulation provides,

> "9(1) Where an insurance officer has decided any claim or question on an assumption of facts as to which there appeared to him to be no dispute, but concerning which, had a question arisen, that question would have fallen for determination by the Secretary of State, it shall be deemed to be a sufficient compliance with the requirements of section 100(2) (appeals to local tribunals) as to notification to the claimant to give him notice in writing informing him of the decision and of the reasons for it and that, if he is dissatisfied with the decision, he shall reply to that effect, giving the reasons for his dissatisfaction".

16. Regulation 9(1) clearly envisages that the insurance officer may assume that for example, the contribution record for a particular tax year is as he has ascertained it to be (e.g. from a computer print-out) and that he may therefore assume a matter which, if disputed, would have fallen for determination by the Secretary of State. In this case the local insurance officer rightly assumed that no contributions had been paid or credited to the claimant for the tax year 1975/76 and there was therefore no need to refer the matter to the Secretary of State for his determination. It was also known that the claimant had sufficient contributions in the tax year 1976/77. Which tax year was to be chosen was in our view a matter for the statutory authorities, interpreting paragraph 3(4) of Part I of Schedule 3 to the 1975 Act, and was not a Secretary of State's question under section 93(1)(b).

17. In the same vein is section 103 of the Social Security Act 1975 which applies where an insurance officer, local tribunal or Commissioner considers that a question arises for determination by the Secretary of State. Section 103(3) provides that the insurance officer (and a local tribunal or Commissioner—section 104(4)) may "(a) postpone the reference of, or dealing with, any question until other questions have been determined; (b) in cases where the determination of any question disposes of a claim or

any part of it make an award or decide that an award cannot be made, as to the claim or that part of it without referring or dealing with, or before the determination of, any other question". Sections 103(3) and (4) clearly in our view permit the insurance officer, local tribunal or Commissioner to decide a claim to benefit on its merits and to postpone a reference of a question to the Secretary of State where it is clear that the claim can otherwise be satisfactorily disposed of as in our view is the situation in this case.

18. There are a number of Commissioner's Decisions on the ambit of a Secretary of State's question under section 93(1)(b) (i.e. "a question whether the contribution conditions for any benefit are satisfied"). They indicate a divergence of opinion and we will refer only to a reported decision of the Chief Commissioner in R(U) 2/69. He was there concerned with a claim to earnings-related supplement to unemployment benefit. He pointed out that the practice had been to frame a contribution question for the Secretary of State under section 64 of the National Insurance Act 1965 (the predecessor of section 93 of the 1975 Act) by reference to the days for which benefit was claimed. He then drew a distinction between that practice and the case with which he was concerned, namely a claim to earnings-related supplement. He pointed out that the wording of section 2(9) of the National Insurance Act 1966 dealing with questions for the Secretary of State relating to a person's "reckonable earnings" was narrower than the wording of section 64(1)(a) of the 1965 Act and added:

> "10 .... The insurance officer contends, and his legal representative told me that the Secretary of State takes the same view, that the question which the Secretary of State is required under section 2(9) to decide is not which was the relevant tax year and what were the claimant's reckonable earnings in it, but what were the claimant's reckonable earnings for a relevant tax year (or years) named by the insurance officer. I have no doubt that the insurance officer's contention on this point is correct. A decision on the question which was the relevant income tax year involves deciding many questions which are clearly for the statutory authorities to decide".

19. We take the point, made by Mr Compton, that the Chief Commissioner there was dealing with the narrower section 2(9) of the 1966 Act. But nevertheless we consider that now that the question of the beginning of a period of interruption of employment has been introduced into contribution conditions for maternity allowance (which was not the position under the National Insurance Act 1965—see Schedule 2 of that Act), the same considerations apply as to "tax years" "benefit years" and "relevant past years" as applied to earnings related supplement in R(U) 2/69. The above-cited statement by the Chief Commissioner in R(U) 2/69 therefore in our judgment applies equally to the contribution conditions for maternity allowance and to the correct practice in framing a question for the Secretary of State. There should be no "umbrella" reference but a reference in relation to a given tax year or years predetermined by the statutory authority making the reference. Accordingly we now proceed to adjudicate on the matters which, as we have indicated above, we regard as being properly within our jurisdiction, and which are in fact sufficient to dispose of this appeal.

20. It has already been indicated that the maternity allowance period for the claimant ran from 23 April 1978 to 26 August 1978 inclusive. If there were no "linking" of periods of interruption of employment under section 17 of the 1975 Act, then the relevant past year within the meaning of paragraph 3(3) of Part 1 of Schedule 3 to the 1975 Act (see paragraph 7

above) would be the tax year 1976/77. That follows from the definitions of "relevant past year" and "relevant benefit year" in paragraph 3(4) of Part 1 of Schedule 3 to the 1975 Act and was not in controversy.

21. What is in controversy is the date of "the beginning of the period of interruption of employment which includes the relevant time", within the meaning of paragraph 3(4)(c) of Part 1 of Schedule 3 to the 1975 Act (see paragraph 7 above). The problem arises because on or about 12 December 1977 the claimant sent to the Department a form MED 3 signed by her doctor on 9 December 1977 and advising the claimant to refrain from work for 7 days because of upper respiratory tract infection. On the reverse of that form MED 3 signed by the claimant on 9 December 1977 she stated that she had become unfit for work on Friday, 9 December 1977 (presumably the day on which would fall the first of her two night duties), and that she had last worked on the preceding Saturday, 26 November 1977. She stated that her employer was Portsmouth Hospital and she completed part C on the reverse of the form MED 3 in which she stated "The information given by me is true and complete. I claim benefit". The local insurance officer, by a decision a copy of which the claimant agreed that she had received, disallowed that particular claim on the ground that the relevant past year for contribution purposes was 1975/76 and that she had no contributions for that year. The claimant submitted a continuation certificate (form MED 3) signed by her doctor on 18 December 1977 and signed by her on the same date, in which she again stated "The information given by me is true and complete. I claim benefit".

22. A further form MED 3, signed by the claimant's doctor on 17 February 1978 in which her doctor advised her to refrain from work for 1 week because of vomiting of pregnancy was submitted to the Department. On the reverse of that form the claimant stated that she had become unfit for work on Thursday, 16 February 1978 and that she had last worked on Sunday, 12 February 1978. There again presumably what she meant was that she had last worked at the previous weekend and had become unfit for work on the following Thursday i.e. just before she was due to start her next two nights of weekend work. This time the claimant wrote in the space on the form MED 3 headed "Full name and address of employer" her own home address but we do not consider that this affects the question whether or not she intended to claim benefit, though she so contended. She again signed the statement on the form MED 3 "The information given by me is true and complete. I claim benefit".

23. The issue turns on the point that if those three forms MED 3 are taken as having the effect that the periods comprised in them (i.e. the days that the doctor advised the claimant to refrain from work) are days of interruption of employment (i.e. days of incapacity for work within the meaning of section 17(1)(c) of the Social Security Act 1975) then those periods are not separated by any period of more than 13 weeks (i.e. periods of 7 days each—see section 17(1)(d) of the 1975 Act). As a result the whole period from 9 December 1977 to 23 February 1978 is to be treated as one period of interruption of employment, because of the "linking" provisions of section 17(1)(d) of the 1975 Act. And there is then less than 13 weeks between the expiry of that period i.e. 23 February 1978 and the beginning of the maternity allowance period on 23 April 1978.

24. In reported decision R(G) 1/78 it was decided that the "linking" provisions of section 17 of the 1975 Act do apply to maternity allowance despite the somewhat striking fact that maternity allowance is not referred to in the preliminary words of section 17(1) of the 1975 Act. We nevertheless consider R(G) 1/78 to be correct and to apply to linking for

contribution purposes as well as for the purposes of earnings-related supplement (with which R(G) 1/78 was in fact concerned).

25. A number of Commissioner's decisions have been concerned with the question whether when claimants have submitted a form MED 3 they must be taken to have made a claim for sickness benefit which could cause "linking" of periods of interruption of employment. In our judgment, if a claim for benefit is made and signed by a claimant on form MED 3 for a particular period, then that period so specified in the form MED 3 must be taken as a period of incapacity for work and it is inappropriate to admit evidence to show capacity for work (as appears to have happened in Commissioner's Decision C.S.G. 3/79 (not reported)). It is however a different matter altogether if a claimant can show that, although a form MED 3 signed by him or her as claiming benefit was sent to the Department, it was not meant to be a claim at all. This matter was exhaustively considered by the learned Commissioner in Decision C.G. 4/79 (not reported), in paragraph 17 of which he states:

> " .... doubtless as a general rule, if a person signs a document in which he purports to claim benefit, he will be bound by that action. However, if the proposition cited is meant to mean that someone, who has signed the declaration of the kind in question, is ipso facto to be considered to have made a claim, irrespective of any other circumstances, that, in my judgment, is going too far. A person may have been induced to sign a statement as a result of fraud, or as a result of misrepresentation, or because he is illiterate or mentally disturbed, or subjected to duress. Consideration must be given to the doctrine of "non est factum" and other legal and equitable remedies. Of course, if a person signs a declaration which contains such words as "I claim benefit", it will normally be a very heavy burden on him to show that he was in fact not making a claim for benefit. However, the issue is essentially one of burden of proof; there can be no question of absolute commitment."

26. We adopt that statement as a correct statement of the law. There is moreover an additional circumstance (not referred to in the above passage from C.G. 4/79 (not reported)) which may serve to indicate that no claim was intended to be made despite the submission of a form MED 3 signed as claiming benefit. An example occurred in Commissioner's Decision C.S.G. 3/79 (not reported) where the claimant was able to satisfy the Commissioner that her employers had considered themselves bound to submit forms MED 3 to the Department even though the claimant had requested her employers not to do so (see paragraph 7 of C.S.G. 3/79).

27. In this case the claimant asserts that, although she signed the declaration to claim benefit on the forms MED 3, she did not intend to claim because it was her employers who forwarded the forms MED 3 to the Department whereas she knew there was no point in claiming because she worked only two nights a week. She considered that benefit would not be payable unless she was claiming for at least three days. Her evidence at the oral hearing before us indicated that she submitted forms MED 3 to her employers to satisfy them that she was truly incapable of work, as there had been some problems because she suffered frequent short period attacks of migraine which incapacitated her. As a result, although under the terms of her contract of employment medical certificates (forms MED 3), were not required unless she had three days absence from work, she nevertheless submitted them (even though she was away for only two days on each of the occasions in question) so as to satisfy her employers she was genuinely ill.

28. Although we have sympathy with the claimant in her point that she deliberately paid full contributions in the tax year 1976/77 in order to "save up" for maternity allowance, nevertheless we consider that on all three forms MED 3 detailed above she did intend to claim benefit. She knew that the forms would be submitted by her employer to the Department and would be regarded as forms of claim. Indeed, prior to the date of the third she had received an insurance officer's decision adjudicating on her claim by the first of the three. Consequently the periods stated in those forms MED 3 as being days of incapacity of employment must be so treated, with the result that linking of the periods occurs.

29. It is clear that in this case the claimant's employers did not in any way compel the claimant against her will to submit claims to the Department. They merely followed through a routine procedure of forwarding all forms MED 3 received, a procedure which was known to the claimant and not specifically objected to by her. Consequently there can be no question of duress etc upon the claimant. In the light of these considerations we do not think the claimant derives any help from Decision C.G. 4/79 (not reported) (para 25, supra).

30. In the result we must, on the substantive issues in this appeal, disallow the claimant's appeal. We should perhaps add that although the consequences of her having made two abortive claims for sickness benefit in this case have resulted in "linking", unfortunate for her, to an earlier tax year in which she had made no contributions, nevertheless the linking provisions can operate in a claimant's favour and then he or she is able to continue drawing benefit on contributions paid only in one tax year.

(Signed) Hilary Magnus
Commissioner

(Signed) I Edwards-Jones
Commissioner

(Signed) M J Goodman
Commissioner