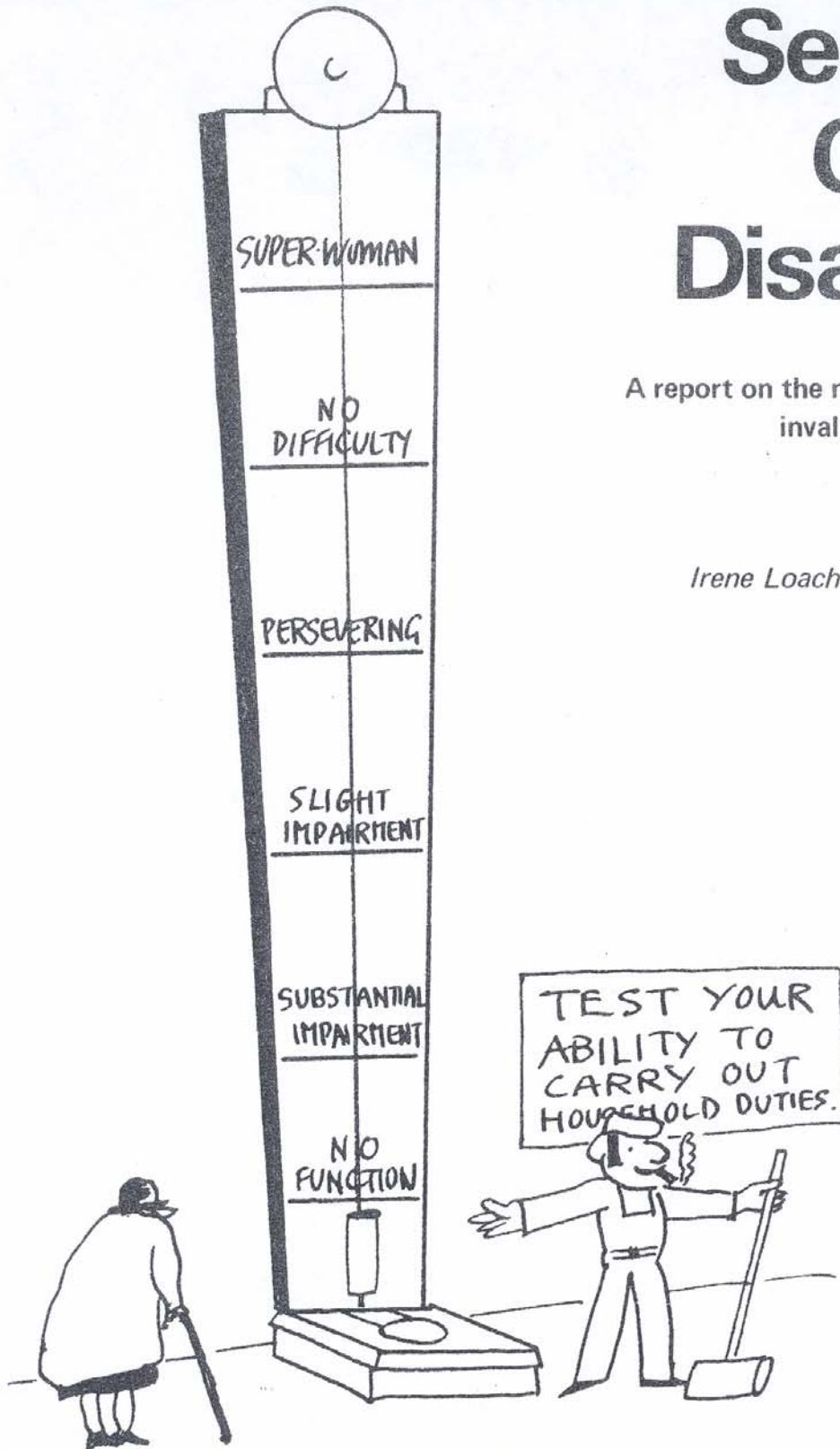


Second Class Disabled

A report on the non-contributory
invalidity pension for
married women

Irene Loach and Ruth Lister



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AUTHOR'S ACKNOWLEDGEMENTS

Ruth Lister is Assistant Director of the Child Poverty Action Group and Irene Loach is organizer of the Disability Alliance. We would like to thank the following people for their help: Sally Baldwin, Geoff Fimister, Caroline Glendinning, Mavis Hyman, Hilary Land, Jo Richardson MP, Oonagh McDonald MP and the members of the Citizens Rights Office. Thanks are due also to those women who allowed us to use their cases, and to Jen McClelland, Nancy White and Sue Whiting for preparing the manuscript for publication. The cartoons are by Sam Smith and Jo Nesbitt.

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By

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Published by
Equal Rights for Disabled Women Campaign
5 Netherall Gardens
London NW3

July 1978

Introduction

‘Second class citizens entitled to third class benefits,’[1] is how Barbara Castle has described the position of married women in the social security scheme.

This report is about the thousands of disabled married women, denied the non-contributory invalidity pension, who have experienced for themselves the reality of Barbara Castle's words.

THE HISTORY OF THE NON-CONTRIBUTORY INVALIDITY PENSION FOR MARRIED WOMEN

In 1974, the Government published a report which reviewed the social security provision for the chronically sick and disabled.[2] Apart from the attendance allowance, specific provision for the disabled was confined to those whose disability arose from work or from service in the armed forces and those who had worked and paid sufficient contributions to qualify for the contributory invalidity benefit. In order to help those disabled people who did not qualify for the existing benefits, the Government proposed a new benefit called the non-contributory invalidity pension (NCIP). This would be paid at the rate of 60 per cent of the standard contributory invalidity pension to those of working age unable to take paid employment. The Government made it clear in its report that the NCIP would be paid only to men and single women but that further study would be given as to how severely disabled married women could best be helped. But a backbench revolt at the Committee stage of the *Social Security Act 1975*, which introduced the NCIP, forced the Government to extend the new legislation to cover married women. There was, however, a catch. Whereas men and single women have only to prove that they are incapable of paid employment (as well as satisfying certain age and residence qualifications) in order to qualify for the NCIP, the *Social Security Act* states that a married or cohabiting woman also has to satisfy the Department of Health and Social Security that she is 'incapable of performing normal household duties.[3]

The NCIP was introduced in the autumn of 1975. But the administrative difficulties created by the inclusion of the additional 'household duties' test were used by the Government as justification for postponing payment to married women in line with its original intention. Public expenditure cuts announced in 1976 then led to further delay. Finally in November 1977 the NCIP for married women, commonly known as 'housewives' NCIP (HNCIP) was introduced, two years after the first payment to men and single women. The benefit is currently £10.50 a week.

The Government estimated, on the basis of the OPCS survey of the disabled, that about 40,000 women would be eligible for the HNCIP.[4] In May 1978, 35,000 women were receiving it.[5] There is no reliable estimate as to how many more disabled women would-be eligible if it were not for the 'normal household duties' test. From the OPCS survey, it appeared that the number might be as high as 100,000. But in a reply to a recent parliamentary question, Alf Morris stated that the number excluded by the 'household duties' test might be double that 'if it is assumed that there are roughly as many women incapable of work as men. [6] In fact, this reply suggests that the Government has no clear idea of how many women are affected.

THE OPPOSITION TO HNCIP

The eventual introduction of the HNCIP met with a less than enthusiastic reception. The National Insurance Advisory Committee to whom the draft HNCIP regulations were submitted for approval, reported that

'the majority of the organisations from which we received representations expressed their opinion that the provisions in the Act which relate to non-contributory invalidity pension (section 36) unfairly discriminate against married women and they asked us to consider recommending that the Act should be amended so as to permit married women to claim the benefit on equal terms with men and single women.'[7]

A study of the needs of a small group of disabled married women published by the Disability Alliance to coincide with the introduction of HNCIP criticised the benefit for 'perpetuating traditional assumptions about a woman's dependence upon her husband and the inevitability of her role as a housewife after marriage.[8] It warned that 'although it remains to be seen how officials will judge claims, both the form of the regulations and the style of the questions which have to be answered in the application form suggest that even those who may be substantially disabled will not be accepted for payment of the pension'.[9] The Disability Alliance's concern was shared by a number of organisations - women's groups, disability organisations, welfare rights agencies - who decided to work together in order to monitor the operation of the HNCIP and to publish this report.

It very quickly became clear that the fears of these organisations were being borne out. The new benefit has proved a nightmare for many women. To date, just over 9,000 claimants of HNCIP have been turned down because they were deemed capable of performing their 'normal household duties.[10] This represents about 15 per cent of all claims for the benefit and just over half of those refused it. A further 1,284 would have been denied the benefit had it not been for a successful appeal.[11] If the evidence we have collected is in any way typical, many of these women will have been denied the HNCIP despite the fact that their disabilities prevent them from doing most of their housework unaided. The hopes of thousands of disabled women were raised by this benefit. For all too many they have now been dashed.

Many of the women who have written to us feel angry and bitter. They also feel humiliated by the procedures they had to undergo to claim the benefit. These are some of their comments:

'Why taunt us with these adverts and have us fill forms and visit doctors just to turn us away? It's all a load of red. tape and waste of money.'

'It seems to me that one has to be just a cabbage before getting HNCIP. I realise that there are a lot of women worse than I am,

but my husband and I think that NCIP is just a vote-catcher and a big fiddle.'

'How incapable does one have to be to get it? It just seems a waste of my time and of the GP's.'

'I cannot lead a normal life and spend most days by myself. I just cannot understand why I was treated in this way. Can you please help...or perhaps you could tell other women what a waste of time it is to apply for this pension and degrade themselves as I think I have done.'

Part Two of this report gives details of just some of the two hundred-odd examples we have received of women who feel that they have been wrongly refused the benefit. In our view, their experiences illustrate the impossibility of applying the 'normal household duties' test fairly and we explain why we believe the test is operationally unworkable. But even if it were possible to operationalise the test so that it was applied fairly within its own terms, thousands of disabled married women who are as severely disabled as many men and single women in receipt of NCIP would still be denied the benefit. What is striking is that virtually every woman who wrote to us had been assessed as being unable to go out to work. Why should these women be denied the NCIP simply because they happen to be married or living with a man as his wife? *We believe that this discrimination against married women is fundamentally wrong and that any married woman who is judged to be incapable of taking paid employment should be entitled to the NCIP. in the same way that any other chronically sick or disabled person is.* Thus, before looking at how the HNCIP is working in practice, in Part One we examine the rationale behind the 'normal household duties' test and challenge the assumptions upon which it is based.

References

- 1 House of Commons Hansard, vol 888, March 1975, col 1942
- 2 Social Security Provision for Chronically Sick and Disabled People, HMSO, 1974
- 3 Section 36(2), Social Security Act 1975
- 4 Social Security Provision . . . , op cit. Estimate based on Harris, A, Handicapped and Impaired in Great Britain, OPCS, HMSO, 1971-2
- 5 House of Commons Hansard, vol 950, 22 May 1978, col 384. At that date there had been 39,000 successful claims but 4,000 had stopped receiving HNCIP because of death or other reasons
- 6 House of Commons Hansard, vol 949, 11 May 1978, col 578
- 7 Report of the National Insurance Advisory Committee on the Social Security (Non-Contributory Invalidity Pension (Amendment Regulations 1977, Cmnd 6900, HMSO, 1977, para 7
- 8 Loach, I, Disabled Married Women, Disability Alliance, 1977, p 30
- 9 Ibid, p 35
- 10 House of Commons Hansard, vol 950, 22 May 1978, col 384
- 11 House of Commons Hansard, 9 June 1978

Part One

The Myth of the Married Woman as Dependent Housewife

THE RATIONALE BEHIND THE 'NORMAL HOUSEHOLD DUTIES' TEST

Although the question of the merits of the 'normal household duties' test was outside the terms of reference of the National Insurance Advisory Committee, its report on the HNCIP regulations contains the clearest published statement of the rationale behind it. It is worth quoting in full:

'Unlike attendance allowance, which is paid in respect of liability to meet personal care needs that are largely common to both sexes and all ages, invalidity benefit - whether contributory or non-contributory - is a substitute for maintenance from earnings and the rationale for its extension to non-earning married women, is that these married women who have chosen not to work in paid employment, but have instead concerned themselves with a wide range of perhaps equally arduous, and certainly equally valuable, but non-paid household duties, should nevertheless be entitled to some benefit if they are prevented from following that activity because of ill health or disablement. It might be mentioned in passing that were the law to allow the housewife to receive an incapacity benefit while still capable of doing her normal job, it might be argued that this would constitute unfair discrimination in favour of married women.

'The contribution conditions for sickness benefit, and the necessity for this benefit to precede invalidity benefit, mean that a person cannot qualify for the contributory incapacity benefits unless he has had a relatively recent paid job. Men and single women of working age are usually responsible for financial self support and if they suffer from some physical or mental impairment and are neither in work nor seeking work, it is likely to be because their impairment prevents them doing a

paid job. In contrast, many unimpaired married women rely on their husband's income for support and occupy themselves with making a home for their family. Such women regard caring for their home and family as their major occupations in the same way that other people of working age regard their paid employment. In considering whether society should provide her with some income because she is handicapped for work, it is not unreasonable to ask of an impaired married woman who is not in work, not only whether she is incapable of some other work for which an employer would pay her, but also whether she is incapable of her normal work (i.e. her housework). The two-part test (incapacity for paid work and incapacity for household duties) is quite clearly akin to the two-job test (incapacity to do own job and incapacity to do any job for which an employer would pay) applied to other invalidity pension claimants. [1]

Before examining the reasonableness of the Committee's assertion that 'it is not unreasonable' to apply a dual test to married women, we need to look more closely at the assumptions which underlie this bland statement and to place them in the context of the development of the social security scheme as a whole.

(i) Social Security for married women: past and present

There are two basic, interlinked, assumptions which underlie the 'normal household duties' test. These are that married women are, by definition, house-wives and that, typically, they are dependent upon their 'breadwinner' husbands for financial support. These assumptions underpin the social security scheme as a whole. They were spelt out in the Beveridge Report-of 1942 which stated clearly that 'the attitude of the housewife to gainful employment outside the home is not and should not be the same as that of a single woman. She has other duties.' [2] Beveridge's proposals for the treatment of married women were criticised at the time by several leading women's organisations, [3] yet 33 years later the DHSS was still justifying the social security scheme's

continued discrimination against married women in exactly the same terms:

'It is normal for a married women in this country to be primarily supported by her husband and she looks to him for support when not actually working, rather than to a social security benefit. ... Indeed, it continues to be a widespread view that a husband who is capable of work has a duty to society, as well as to his wife, to provide the primary support for his family.[4]

The HNCIP provides a clear example of how official views about the position of married women have not progressed since the 1940s. Furthermore, it actually resurrects a test which was applied, and criticised, back in 1913. Hilary Land has documented some of the evidence given to the Sickness Benefit Claims Committee on the test of incapacity for sickness benefit which, for women, was extended to include incapacity to do housework.[5] Land describes the problems the friendly societies faced in trying to define 'housework', which must strike the DHSS as all too familiar:

'Some tried to distinguish between "light" housework which was acceptable and "heavy" housework, which was not. One society defined light housework to include poking and putting coal on a fire but not doing up the hearth; putting a kettle on the fire and washing up the teapot and washing and dressing children but not carrying them. Sweeping rooms and making beds constituted heavy housework. Another disqualified women who did any domestic work involving lifting weights or stooping, such as housecleaning or scrubbing floors, hanging out or ironing linen.'

One of the main criticisms made of the housework test which, as we argue later, is still valid today, was that it penalised the many women who insisted on doing some housework, however ill they were. For example, the secretary of one friendly society with 66,000 women members explained to the Committee:

'Lancashire women have a tendency to do housework. They cannot sit still and do nothing. We have great difficulty with our women members. ... However ill they may be, they will not sit down and do nothing. They must be doing housework.'

Another witness, a doctor with a practice in Stepney who was also a member of the London Insurance panel, argued, as we are doing, that women should be given the benefit as long as they were incapable of remunerative work:

'because a woman was quite able to fry a piece of bacon for her breakfast I should not say that she was capable of work. These are the things that approved societies want people to sign off for.'

It is depressing that the official view of what constitutes a married woman's 'normal work' has not changed in the course of 65 years.

We turn now to look at who the 'housewives' are for whom the HNCIP is designed.

(ii) Who or what is a housewife?

Although the National Insurance Advisory Committee carefully avoided using the term 'housewife' for most of its report, it made it quite clear in its justification of the 'household duties' test (quoted on pages 9-10) that it regarded housework as being a married woman's 'normal work'. From the start, the HNCIP has been put across as a benefit for severely disabled housewives. But what is a housewife? The question is a key one, yet, as Irene Loach pointed out in *Disabled Married Women*, it is surrounded in confusion. 'Exactly who is a housewife?' she asks. 'Is it, as Buckle defines it, a person not in the labour market and not seeking work; or is it the person who does most of the household chores, as Harris maintains?[6] The latter definition was used in the OPCS survey of the disabled. For the purposes of the census, the OPCS defined a housewife as 'that member of household, male or female, who is mainly

responsible for the household shopping'. But, as the census form does not ask who is responsible for shopping, in practice the woman is automatically classified as the housewife regardless of whether or not she is the family's chief economic supporter or classifies herself as the head of the household.[7] For the purpose of HNCIP, the Government explained that 'Housewives ... are essentially married women who do not have paid work, and whose normal job is in the home.[8] While this definition may sound reasonable, it is in fact totally useless when applied to disabled married women for the purposes of deciding how they should be treated in the social security scheme. If a woman is too disabled to do paid work, the fact that she does not have paid work does not tell us whether she is a housewife or not. And how does one know what her 'normal' job would have been if it had not been for the disability which is preventing her from doing her normal job? In fact, the Government's official definition is a rather poor disguise for its *de facto* definition, which treats the terms 'married woman' and 'housewife' as being synonymous for the purposes of HCNIP.

What this means in practice is that any disabled married woman who does not satisfy the contribution test for the national insurance invalidity pension is automatically classified as a housewife. The term 'housewife' is thus stretched to include not only married women who *have* chosen to remain at home for all their married life and not to take paid employment, but also the following categories:

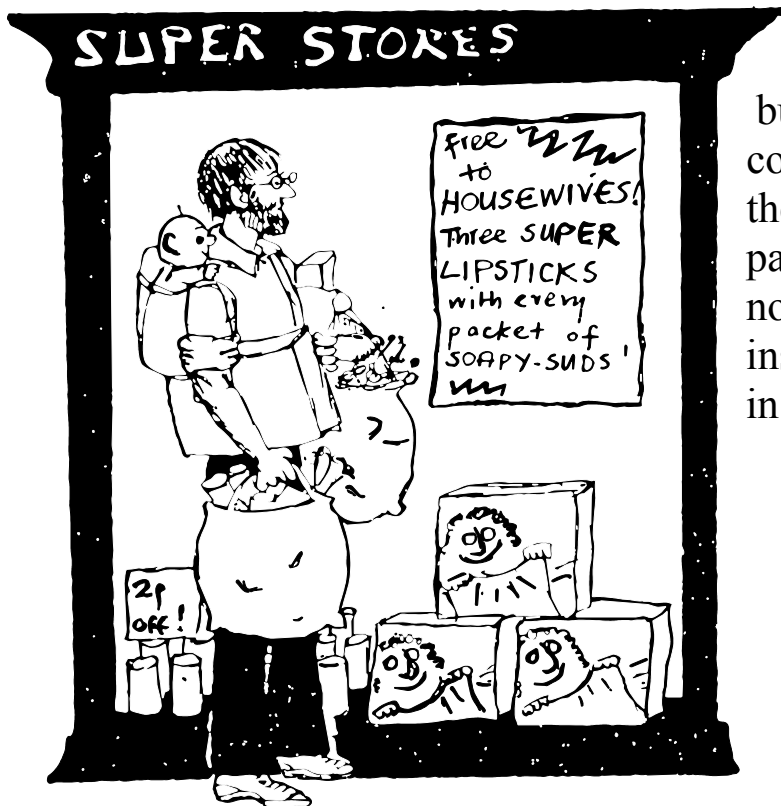
- married women who had to give up their paid work because of their disability but who do not qualify for the invalidity pension either because they had paid insufficient contributions or because they had opted to pay the reduced married woman's contribution (which does not entitle them to national insurance benefits)
- married women who had been in paid work until they had children (or other domestic responsibilities) and who then became disabled while temporarily out of the labour force. Even if these women had paid full contributions when in work, they would not be eligible for the invalidity pension unless they had worked and paid contributions in the tax year ending in the previous calendar year.

- married women who have never been able to take paid work because of their disability.

Most of the women whose cases are detailed in Part Two of this report fell into the first or the third category.

By lumping together these different groups of married women under the category of 'housewife', the DHSS is assuming (i) that those disabled married women who have always been too disabled to take paid work would never have gone out to work anyway, and (ii) that those who gave up paid work because of domestic responsibilities and then became ill would not have gone back to work anyway.⁹ Is such an assumption reasonable? Clearly, officials have no way of knowing what each individual disabled woman would have done had she not been disabled, thus the test of the reasonableness of this assumption has to be based on the balance of probabilities. The evidence about married women's employment patterns which we present below suggests that on the balance of probabilities the majority of these women would in fact have spent a good proportion of their working lives in paid employment had they not been disabled. We also look at how reasonable it is to define housework as a married woman's 'normal duties'. The final question we deal with in Part One is whether it is fair to penalise married women

workers who either had not worked long enough to build up an adequate contribution record before they were forced to give up paid work or who had opted not to pay the full national insurance contributions when in work.



THE REALITY OF MARRIED WOMEN'S POSITION

(i) Married women and paid employment

'I think it is a lot of cods wallop, if you understand my expression. I thought NCIP was for wives who would like to go out to work but who were incapable of doing so. I definitely am incapable of doing paid work, so I thought I should be eligible.'

This comment from one woman who was refused HNCIP illustrates very nicely the gap between the assumptions on which the 'household duties' test is based and the reality of the position in which individual disabled wives find themselves. The DHSS appears to be living in a bygone world in which it was the norm for married women to give up paid employment on marriage. Indeed, David Ennals, the Secretary of State for Social Security, himself admitted this when, in his Eleanor Rathbone lecture, he stated: 'We have been slow in coming to terms with the greatest social change of the past 40 years -the increase in the proportion of married women at work.[10]

It would appear that the DHSS is deliberately ignoring the extent of this social change and is refusing to accept the fact that it is now the norm for married women to go out to work for a good proportion of their married lives.

A brief look at the evidence about married women's employment patterns shows just how unrealistic and outdated is the view of the position of married women which underlies the 'household duties' test.

Economic activity rates

The normal position of married women in relation to the labour market today was summed up by the Department of Employment in its review of women and work:

'The prospect of being continuously available for employment over a period of 20 or 30 years is now the normal pattern, and no longer the rarity it was, say, between the wars. ..Whereas in 1931 the older married woman in employment was a

comparative rarity, *it is now normal for married women to work*, and withdrawal from the labour market and return to it is the general pattern.’[11] (our italics)

In the last 25 years, the economic activity rate for married women (i.e. the percentage of married women in work or seeking work at anyone point in time) has more than doubled and is now estimated by the Department of Employment to be over 50 per cent.[12] At the same time, the overall economic activity rate of unmarried women has gone down and is now actually lower than that of married women - 41.6 per cent as against 49 per cent in 1976 (excluding students). The projections for 1986 estimate that 55 per cent of married women but only 41 per cent of unmarried women will be economically active. By then, married women are expected to constitute 28 per cent of the workforce.

TABLE ONE: Economic activity rate of married women (including students)

| | 1911 | 1921 | 1931 | 1951 | 1961 | 1971 | 1975 | 1978 | 1981 | 1986 |
|---|------|------|------|------|------|------|------|------|------|------|
| % | 9.6 | 8.7 | 10.0 | 21.7 | 29.7 | 42.3 | 47.9 | 50.8 | 51.9 | 54.9 |
| Source: <i>Department of Employment Gazette</i> , June 1977, HMSO | | | | | | | | | | |

Commenting on these trends, the Central Statistical Office has noted that

'what is particularly striking about these rates is the change between generations. ..whereas only one third of the 45-49 age-groups born at the turn of the century were working in 1951, twenty years later in 1971 well over half of the 45-49 year old married women were working.’[13]

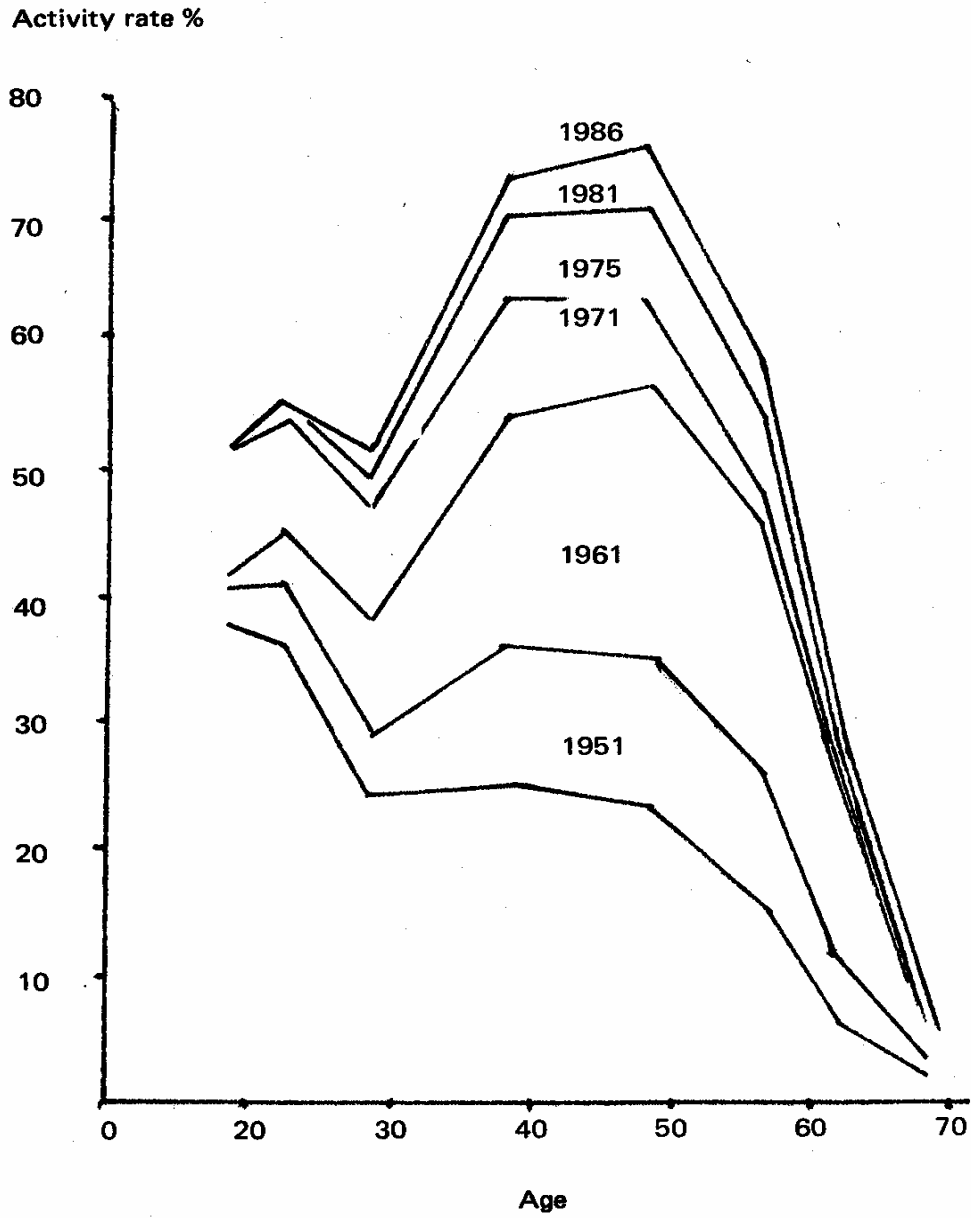
If we look at the wider age band of 35 to 54, we find that the Department of Employment estimates that, at present, roughly seven out of every ten married women are economically active. As Figure One shows, activity rates vary very much with age, with women aged between 25 and 34 being least likely to be in employment. However, even in this age-group, it is estimated that 49 per cent of married women are at present economically active.

The importance of children

The lower economic activity rate of those in the 25 to 34 age-group is, of course, a reflection of the fact that those are the years when women are most likely to be taking time out of the labour force to care for young children. It is the presence of children rather than marriage per se which is likely to determine whether a married woman goes out to work or not. Married women aged under 40 without any dependent children are no less likely to be in employment than unmarried women of the same age. According to the Central Statistical Office, 'the most extreme differences are for women in their twenties where a wife with no dependent children is more than four times as likely to be economically active as a mother with one or more dependent children'.[14]

The age of the youngest child and the number of children are also important factors in the likelihood of a married woman being economically active. The 1971 census found that, whereas only about a fifth of married women with pre-school children were economically active, half of those with children aged 5 to 10 and three-fifths of those with children aged 11 were in the employment field. Even within the pre-school age group mothers of children aged under two are less likely to be in employment than the rest. Although lone mothers are more likely to be in work than married mothers, as Peter Moss has pointed out, the difference is only slight once the youngest child reaches school age. 'By this stage the employment rate (in the 1971 census) for mothers living with their husbands was 94 per cent of that for non-married mothers, compared to 68 per cent where the youngest child was of pre-school age.'[15] The 1971 census also found that, taking married and lone mothers together, the percentage who were in the labour market fell steadily from 44 per cent of those with only one child to 25.6 per cent of those with five or more children.[16]

FIGURE ONE: Activity rates for married women: age profiles 1951-86



Source: *Department of Employment Gazette, June 1977*

At the same time as the economic activity rate of married women without dependent children has been increasing, so too has that for those with children. By 1976 just under half of all married women with children aged under 16 were estimated to be in employment.[17] Between 1961 and 1911, the employment rate for all women with children of primary school age rose by 59 per cent and for those with pre-school children it rose by 63 per cent. The evidence suggests that there has been a further increase since 1971.[18] So, even among married women with young children, the full-time 'housewife' is becoming less common. Furthermore, a number of studies have revealed that many more mothers would like to go back to work than are able to. Surveys carried out by OPCS in 1965 and 1972 both found that two-fifths of non-employed women with pre-school children would return to work sooner than they intended if satisfactory day care facilities were available, and in the second survey this was true for the same proportion of mothers of school-age children also.[19] A recent study carried out by the Thomas Coram Research Unit in two inner London areas where the employment rate was already 40 per cent, found that 40 per cent of mothers not in work would have liked to have had a job.[20]

Not only are more married women now combining motherhood with paid employment; an even more significant factor in the rising economic activity rate of married women is the fact that motherhood looms less large in their married lives. Two major trends have contributed to this, particularly since the mid-1960s. On the one hand the gap between marriage and the birth of the first child has been lengthening, thus leaving a higher proportion of younger wives free to go out to work, and on the other hand, fewer families have been having three or more children, thus compressing child-rearing into a narrower time span and freeing older wives to return to work sooner. To quote the Department of Employment's review of women and work again:

'The availability of women for employment has been affected by changes in the pattern of family formation. A married woman born in 1940 would typically have married between the ages of 20 and 25, and would have two children within five years. She would therefore be "married-and-with-no children under five" again in her early 30s and in the words of Professor

Titmuss would have "largely concluded her maternal role" by the age of 40.' [21]

The increasing participation of married women in the workforce undermines the assumptions underlying the social security scheme that married women are typically their husbands' financial dependants. As the Equal Opportunities Commission has pointed out:

'Evidence is now available which shows that the level of women's earnings is a crucial determinant in the standard of living of not only single women and fatherless families, but also of married couples and their families.

Women's wages are frequently an integral part of family income, and as such are as important as those of the husband. [22]

This evidence includes the DHSS's own analysis of *Family Expenditure Survey* data which revealed that working wives contribute on average a quarter of family income and that, if it were not for their contribution, the number of families living below the poverty line would have trebled in 1974.[23] The recent report by the Royal Commission on the Distribution of Income and Wealth quoted more recent evidence from the *General Household Survey* which again showed that wives' earnings 'are of crucial importance to a family's level of income'.[24] The fact that economic support is increasingly shared between husband and wife has also been recognised in Family Law. Under Divorce Law and the proposed changes in the law governing separation in the Magistrates' Courts, a mutual obligation to maintain is now placed on both partners.

(ii) Married women and housework

The above evidence on married women's employment patterns has shown the 'key assumption underlying the 'normal household duties' test to be untenable. Married women are not typically full-time housewives. There is a further related assumption implicit in the 'household duties' test which, although less crucial to the argument, is worth examining. This is that housework is exclusively the work of women. It is true that the Government is not on quite such shaky ground here for it is well

known that, in general, married women are still bearing the main burden of domestic responsibilities for housework and the care of children and other dependants on top of their paid employment. But even this is beginning to change slowly. The Department of Employment review, *Women & Work*, refers to research carried out by Young and Willmott and also by Hannah Gavron which suggests that

'some husbands and wives may be gradually adopting more similar roles as regards home and work responsibilities. "Husbands are more at work inside the home; wives more outside." ,

and that

'a new style of family might be emerging. ..based on something approaching symmetry.' [25]

Audrey Hunt's 1965 survey for OPCS found that just over seven in ten working wives got some help in the home, mainly from their husbands, though this did tend to be confined to washing up and 'other housework' and rarely extended to help with more time-consuming tasks such as cooking, washing, ironing and mending.[26]

It is interesting that one section of the DHSS, the Supplementary Benefits Commission, clearly does believe that husbands also have domestic responsibilities. In its latest Annual Report it observed that

'Attitudes among men and women to their respective roles in society are also changing. More people now recognise a woman's right to choose either between full-time work and domestic responsibilities or to combine the two roles, and more people accept that the needs and rights of women, either with no children or whose children have grown up, are little different from those of most men. In more and more families both men and women are combining the role of wage-earner with a share of their joint domestic responsibilities. There is, additionally, a greater awareness among both sexes of a married woman's right

to the financial independence which she gains through employment.’[27]

At a more practical level, social security officers investigating a case of alleged cohabitation are supposed to ascertain whether the man performs 'those household duties normally done by a husband for his wife, e.g. decorating, washing up, looking after the children etc.’[28] One can imagine the outcry which would ensue if married men had to satisfy the DHSS not only that they were unfit to take paid employment but also that they could not perform their 'normal household duties' of washing up, looking after the children etc, in order to qualify for the HNCIP!

A recent decision by the National Insurance Commissioner has also given official recognition to the fact that housework is not necessarily exclusively a wife's job. Until recently DHSS guidance to doctors issuing medical evidence in support of claims for contributory sickness and invalidity benefit advised that:

'If a woman has for some considerable time (perhaps six months or so) been advised to refrain from her normal paid employment but is nevertheless doing an amount of housework in her own home for which she could reasonably expect to be paid if it were done for an employer, there will generally be no ground for continuing to issue Statements of advice to refrain from work.’[29]

This instruction, based on a decision by the Tribunal of Commissioners in 1951,[30] was challenged last year in front of the National Insurance Commissioner, on the grounds that it contravened the *Sex Discrimination Act*. In his decision, the Commissioner ruled that:

'the same approach would hold good for a man, whose incapacity for work was in issue. If the evidence showed that he undertook household chores, as many men now do, or worked in the garden, that evidence would be admissible on the question whether he is capable of remunerative work.’[31]

The appeal was unsuccessful but it resulted in a decision to amend the instruction to doctors so that it should refer to male as well as female claimants.

It should be pointed out that this instruction is not the same thing as the 'normal household duties' test attached to the HNCIP. The rationale behind it is that ability to carry out work in the home can be relevant in deciding whether a claimant is able to carry out work outside the home.[32] It is not an *extra* test to be applied to those who clearly cannot work outside the home. As the cases described in Part Two show, the application of the 'household duties' test in addition to the standard paid employment test means that to qualify for HNCIP a married woman is likely to have to be much more severely disabled than people who qualify for the ordinary NCIP or for the contributory invalidity benefit. We doubt very much whether, for instance, all those recipients of NCIP or invalidity benefit who are single are so incapacitated that they are unable to do any of their own housework or cooking. This is borne out also by the experience of the Newcastle Upon Tyne Citizens Advice Bureau's Tribunal Assistance Scheme. They reported that all the 20 or so claimants represented by them at a tribunal 'would seem to be at least as disabled as those receiving contributory invalidity benefit or non-contributory invalidity pension.'[33]

Before turning to the evidence of how severely the 'household duties' test is being applied in practice, we deal briefly with one outstanding question arising from the application of the test to all married women.



MARRIED WOMEN WORKERS WHO FAIL TO SATISFY THE CONTRIBUTION TESTS FOR INVALIDITY PENSION

As we pointed out above, one of the groups classified as housewives for the purposes of the HNCIP are those married women who are actually forced to give up paid employment because of their disability but who do not satisfy the contribution tests for sickness benefit and invalidity pension. In the case of the small number who have paid full contributions but who have not worked long enough to qualify for contributory benefits, surely even the DHSS cannot justify treating them differently from men and single women in the same position? But what about those women who chose not to pay full contributions?

The National Insurance Advisory Committee made the point that

'Any married woman in paid employment who wished to insure herself against complete loss of income if she became incapable

of work has always had the opportunity of continuing to pay full national insurance contributions and for such women the new benefit will not normally be applicable.’[34]

The Government Report, *Social Security Provision for Chronically Sick and Disabled People*, suggested that the problem was only a temporary one because of its intention to abolish the married woman's option to pay reduced contributions which 'will ensure that almost all married women in the employment field will be covered for invalidity benefit’.[35] Certainly, once all married women workers are paying full contributions, there should be no problem about those actually in the employment field at the time of the onset of their disability (apart from the few mentioned above who haven't worked long enough to build up the required contribution record). But the method adopted by the Government to phase out the married woman's option means that it is going to be a long time before all married women are paying full contributions.[36] Prior to the introduction of the new pension scheme, only a quarter of employed married women were paying the full contribution.[37] The lack of publicity about the need for married women to opt into the new pensions scheme before its start in April 1978 if they want full membership of it and the absence of advice for individual women unsure whether to opt in or not, make it unlikely that many women previously paying reduced contributions will now have opted to pay full contributions.

The implications of the National Insurance Advisory Committee's observation quoted above would appear to be that, if a married woman chose not to pay full contributions when in work, then that's her hard luck. But this ignores the fact that prior to the introduction of the new pensions scheme the great majority of married women would have been ill-advised to pay the full contributions. Typically they could have been in low paid jobs which meant that the flat rate contributions levied prior to 1975 formed a significant proportion of their earnings. Even if they had paid the full contribution they would not have received the same benefits as other contributors.[38] It is only now that the half-test rule is to be abolished and that basic pension rights will be protected while a contributor stays at home to care for children or disabled relatives that it

has become worthwhile for the average married woman to pay contributions.[39]

To conclude, the evidence about the pattern of married women's employment does not support the premise underlying the 'normal household duties' test that a married woman's 'normal job' is exclusively in the home. The ability of a married woman to do the housework should therefore be of no more relevance to her claim for NCIP than is the ability of a man or single woman to do housework. In Part Two we show that the 'household duties' test is not only based on false assumptions but that also it can be applied neither consistently nor fairly. Moreover, by penalizing those women who do try to do some work around the home it discourages them from trying to improve their capabilities, thereby frustrating any attempts at rehabilitation.

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2. Beveridge Report, HMSO, 1942, para 114
3. cf Harris, J, William Beveridge, Oxford University Press, 1977
4. Letter from the Secretary of State for Social Services to the National Council for Civil Liberties, 28 May 1975
5. Land, H, *Disabled and Unequal: A New Benefit for Housewives*, paper given at Disability Alliance Seminar, November 1977
6. Loach, *op cit*, p5
7. Lister, R & Wilson, L, *The Unequal Breadwinner*, NCCL, 1976
8. *Social Security Provision for Chronically Sick and Disabled People*, *op cit*, para 43
9. The Swedish scheme provides a good example of how a disability benefit for married women can be based on a realistic assessment of the individual woman's relationship to the labour market, even though the Swedish disability pension scheme is explicitly intended to provide compensation for loss of earnings. For the purposes of the scheme, married women are divided into two categories. The first category, those who were previously in the labour market but who were forced to give up paid employment because of their disability, are treated in exactly the

same way as employed people generally. Because the scheme is specifically to compensate for loss of income, special rules had to be devised so as to include those women who, at the onset of their disability, were housewives not in paid employment. It is only for this second category that ability to do work in the home is taken into account in assessing entitlement to a disability pension. But it would appear that capacity to carry out domestic work is only relevant if it is at a level that suggests the woman could in fact be employed in domestic labour.

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20. Moss, *op cit*
21. *Women & Work*, *op cit*, p2
22. Equal Opportunities Commission, *Women and Low Incomes*, 1977, para 2.5
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24. Royal Commission on the Distribution of Income and Wealth, *Lower Incomes*, Cmnd 7175, HMSO, 1978, para 5.12
25. *Women & Work*, *op cit*, p 22, referring to Young, M & Willmott, P, *The Symmetrical Family*, Institute of Community Studies/RKP, 1973; Gavron, H, *The Captive Wife*, Pelican, 1968

26. Hunt, *op cit*
27. SBC, Annual Report 1976, Cmnd 6910, HMSO, para 6.4
28. DHSS, Form A69(LT), unpublished
29. DHSS, Medical Evidence for Social Security Purposes, para 3(2)
30. Tribunal of Commissioners' Decision, R(S)11/51, unpublished
31. National Insurance Commissioner's Decision, quoted in a letter from the Minister of Social Security to Jo Tunnard, 26 October 1977
32. *cf* the Swedish scheme quoted in fn 9
33. Newcastle upon Tyne Tribunal Assistance Scheme, Preliminary Observations and Recommendations on Housewives Non-Contributory Invalidity Pension, February 1978
34. National Insurance Advisory Committee, *op cit*, para 20
35. *op cit*, para 44
36. Married women who had opted to pay reduced contributions before 11 May 1977 only lose the right to pay reduced contributions if their marriage ends; they revoke their election; or they do not work for an employer or as self-employed for two consecutive tax years. Women who marry after April 1977 cannot choose to pay reduced contributions
37. DHSS, Social Security Statistics 1975, HMSO, 1976
38. See Lister, R & Wilson, L, *op cit*
39. The half-test rule (by which a married woman, in order to qualify for any retirement pension at all on the basis of her own contributions, has to have paid or been credited with contributions for at least half the number of weeks between the date of marriage and her 60th birthday, if she married before the age of 55) will be abolished in April 1979.

Part Two

The 'Normal Household Duties' Test

An impossible test

Our main argument against the 'normal household duties' test has been one of principle: we do not believe that married women should be subjected to a separate discriminatory test to qualify for benefit. There is also the more pragmatic question as to whether it is possible to administer such a test fairly.

As we noted earlier, the administrative difficulties associated with devising a workable definition of incapacity to perform 'normal household duties' were given as the reason for the delay in introducing the HNCIP. An answer to a parliamentary question, in October 1975, about the progress being made suggested that 'a great deal of effort (was being) put into the search for a scheme for the housewives' non-contributory invalidity pension that will be workable and fair'. The Minister for the Disabled explained that:

'Both professional and lay administrative staff are studying the problem in depth. Discussions have been held with outside experts in the fields of disabled living and functional assessment and further meetings of this kind are planned. Information has been collected on foreign schemes which benefit disabled housewives; in addition a doctor and a lay official from the Department have visited Switzerland to obtain first-hand experience of that country's arrangements in operation'.[1]

A further parliamentary question, a few months later, elicited the response that, although 'considerable progress' had been made, it was not yet possible to name a starting date and that the outcome of the work in progress 'to devise a fair and workable scheme' would be embodied in draft regulations which would be submitted to the National Insurance Advisory Committee.[2]

In view of all this activity and effort the draft regulations, finally published in January 1977, came as something of an anti-climax.[3] Incapacity to perform normal household duties was defined as follows: 'A woman shall not be treated as incapable of performing normal household duties unless she is so incapable by reason of some specific disease or bodily or mental disablement.' This less than helpful definition was elaborated in two further paragraphs. The first stated that the term covered any woman who 'is unable to perform to any substantial extent, or cannot reasonably be expected to perform to any substantial extent, normal household duties'. The second explained that the decision as to whether any individual woman is or is 'not incapable of her 'normal household duties' has to be taken in the context of the actual circumstances of her household. Thus, for instance, if she would be able to do her housework only with the help of certain aids and adaptations but she does not actually have those aids and adaptations, then she should be judged incapable of doing her housework. To these two conditions, the National Insurance Advisory Committee added a third: that if a woman could perform her 'household duties' only with 'substantial assistance from or supervision by another person' then she should be judged incapable of performing these duties for the purposes of HNCIP.

The trouble with these regulations is that they give no guidance whatsoever as to what is meant by 'incapable of performing normal household duties'. They do not even say what 'household duties' are. As the National Insurance Advisory Committee observed, provision has been made in the Act 'for regulations to prescribe the circumstances in which a person is or is not to be treated as incapable of performing normal household duties. It might have been expected therefore that the draft regulations would have attempted to provide a detailed definition, but they do not do so.[4] The Committee was, however, persuaded by the DHSS that its experience of administering other incapacity benefits showed that 'leaving to the statutory authorities the interpretation of "incapacity" works well, enabling consistency to be achieved through the development of case law, while also providing a degree of flexibility to enable justice to be done in varying circumstances.[5] The DHSS also argued that, as they had experience of interpreting incapacity for work in

an almost infinite variety of circumstances, they should be able to cope with any similar problems likely to arise from the 'household duties' test. The conclusion of the Advisory Committee was that

'we think it likely that the adjudication difficulties with the new benefit will be greater than with other incapacity benefits but we are nevertheless not persuaded that these difficulties would be reduced if the regulations were to attempt to provide a more detailed definition.' [6]

The National Insurance Advisory Committee may well be right. But we suspect that the real reason for the absence of a definition of incapacity to perform 'normal household duties' in the regulations was not a desire for flexibility but the inability! of the DHSS to arrive at a workable definition. And we are sceptical of the DHSS's assertion that interpreting the 'household duties' test will be no different from their past experience of administering benefits for those incapable of paid employment. Whereas there is a fairly clear dividing line between being 'in' and 'out' of work for social security purposes, a person is never really 'out' of housework, unless disability is total. As one woman who was turned down observed 'In my own opinion, most disabled and invalids are usually capable of doing *some* household duties, unless they are paralysed from the neck down.' There is no sharp cut-off point between the ability to care for oneself and to care for other people, so at what stage of handicap is a woman to be assessed as capable of performing her 'normal household duties' for the rest of her family? As was argued back in 1913 (page 11) and we show later (page 56), it is not easy to answer this question when so many women are determined to do all they humanly can in the home even at the cost of great pain and effort.

In the pages that follow we examine:

- the difficulties experienced by the claimant in making sense of the application form
- the deficiencies of the doctor's assessment procedure 0 the insurance officers' decisions

- the claimant's problems in appealing 0 the appeal tribunals' decisions
- the way in which the test penalises women who try to do all they
- can despite their disabilities.

1. THE CLAIMANT'S APPLICATION FORM

In order to operationalise the 'normal household duties' test, the DHSS devised a very lengthy application form with 25 sections for completion, divided into three parts. Part 1 covers routine particulars - name, address, date of birth, and so on. Part 2 requests information about the claimant's accommodation, adaptations in the home, special appliances used to help with housework, help given by family or others, and details of other members of the household. Part 3 seeks information about the effects of sickness or disablement. The claimant is asked to assess her capacity to perform four broad household jobs upon which a judgment will be made about her entitlement to benefit (Figure Two). She is advised that:

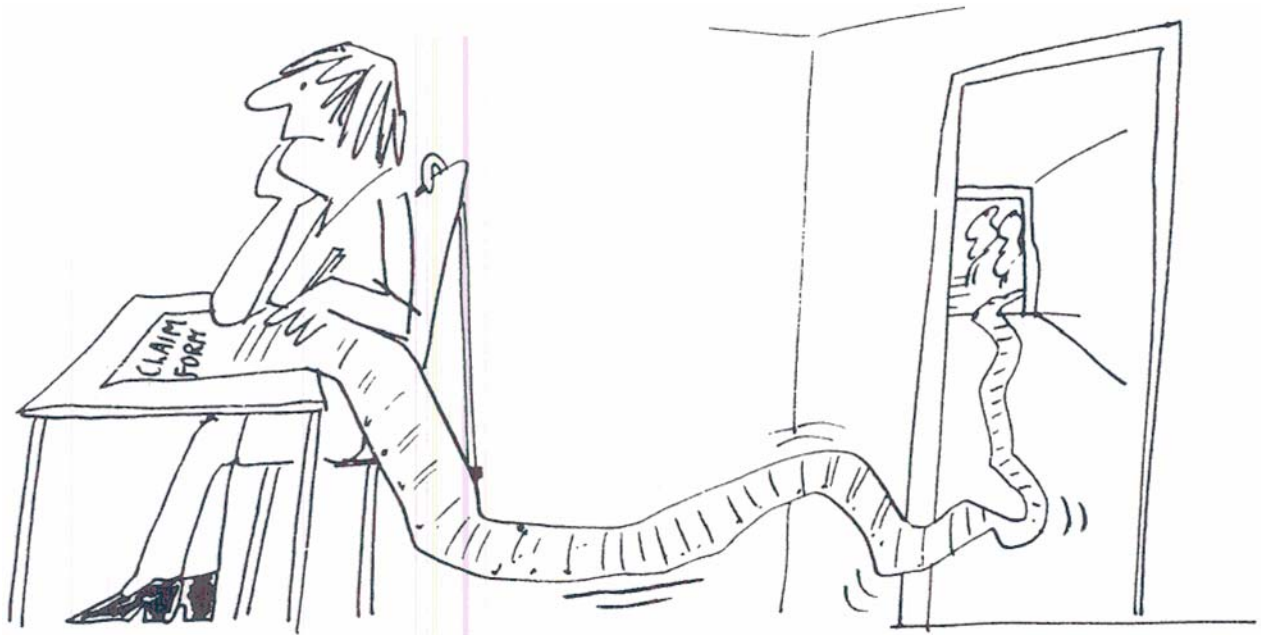
'you must be incapable of doing by yourself (even with the use of aids or appliances which you may have) all or almost all of the duties in your home which would generally fall to the housewife; for example, cooking, cleaning, shopping, washing and ironing, etc. If you are actually doing some of these duties, but only with great difficulty, much pain or extreme slowness, you MAY still be eligible for HNCIP.'^[7]

FIGURE TWO: Self-assessment by the claimant -question 21. Form BF 450/Leaflet NI.214

| Here is a list of some household jobs. For each one tick the box which best describes your ability to do that job <i>by yourself</i> | Normally able to do it without much difficulty | Normally able to do it only with substantial difficulty (e.g. very slowly or with much pain) | Normally unable to do it |
|--|--|--|--------------------------|
| * Plan, select at the shop(s) and collect your weekly shopping | | | |
| * Plan, prepare and cook a main meal for yourself and your family | | | |
| * Do the normal weekly washing and ironing for yourself and family | | | |
| * Keep your home clean and tidy from week to week | | | |

Many of the women who have written to us have complained of the difficulties they experienced in trying to fill in the form. It is unclear what information is required and for what purpose. For example, what is a 'special' appliance? Many women have listed a Hoover or automatic washing machine, as well as those gadgets especially designed for the disabled. If a claim depends on the claimant being unable to do selected jobs by herself, why is it necessary to know who does them instead? The

DHSS have argued that the availability of family help will show how disabled the claimant is, and will therefore help her claim. This may be correct in theory, but in our experience the opposite has often occurred in practice (see page 41)



The form prompts a number of other questions, such as: What does 'normally able' mean to someone with a fluctuating condition like multiple sclerosis? How does one define *much* pain, *great* difficulty, and *extreme* . slowness? (our italics) Where the disability is physical, should planning be given equal importance to doing? In order to attempt a truthful answer, many women who are able, for example, to plan a shopping list but who cannot do the shopping themselves have settled for a compromise answer in the middle box, disguising the true extent of their impairment. Similarly the questions on self- assessment of ability are entirely inadequate, since many activities are not covered -caring for children, to name one. Nor is there room to explain particular problems; can a claimant give a 'full picture' of her functional impairment, as invited to by the form, in four questions and three lines?

Because of the complexity of the application form, many claimants have misinterpreted the questions, thereby reducing their chances of success.

- Mrs. Davies thought that question 21 asked whether the listed jobs 'got done' by someone else if not by her, and so she grossly over-estimated her abilities. She suffered from polio as a child, and has curvature of the spine, arthritis in her back, wrists and neck, and is in considerable pain. When her application was refused, she appealed with the help of a high street citizens rights centre, and her case was accepted. But, as we argue later, for every individual who appeals in this situation, there are many more who do not by virtue of their inability to understand official forms and letters, or who are unable to argue their case effectively once at the tribunal hearing.

There is the further problem that some disabled women are reluctant to admit the extent of their dependence to doctors and government departments, with the result that their claim is refused and might well not be pursued to an appeal, unless the claimant is persistent.

- Mrs. Handler is 25 and suffers from epilepsy. She has up to twenty 'blackouts' every day, and is in danger of burning herself when cooking and ironing, and of falling. She frequently drops things because of unsteady hands and balance, and needs supervision. However, when she saw her doctor, she was embarrassed by his questions and gave a serious over-estimation of her abilities, which was reflected in this report. Mrs. Handler was refused HNCIP, but she sought the help of a Citizens Advice Bureau Tribunal Representation Unit in her town and appealed. At the hearing her representative explained the true circumstances and submitted further medical evidence from Mrs. Handler's hospital consultant, and the appeal was allowed.

A number of women expressed the frustration they had felt in trying to answer the questions on the form, as they seemed so irrelevant to their condition.

‘The mental frustration is not tangible – it cannot be put on a form.’

'I was appalled at the! lack of realism in the housework test questions, as so much depends on whether one is intelligent, has a sense of priorities, is lazy, etc. However, my form and the doctor's form were meticulously answered, although the questions seemed so irrelevant. One day I can do simple jobs. The next I am almost totally chairbound.'

'I found the application form rather stupid. The answers to the questions conveyed nothing. For instance, I do not have any difficulty washing. Any fool can put washing in an automatic washer and switch on. The ironing is a different matter.'

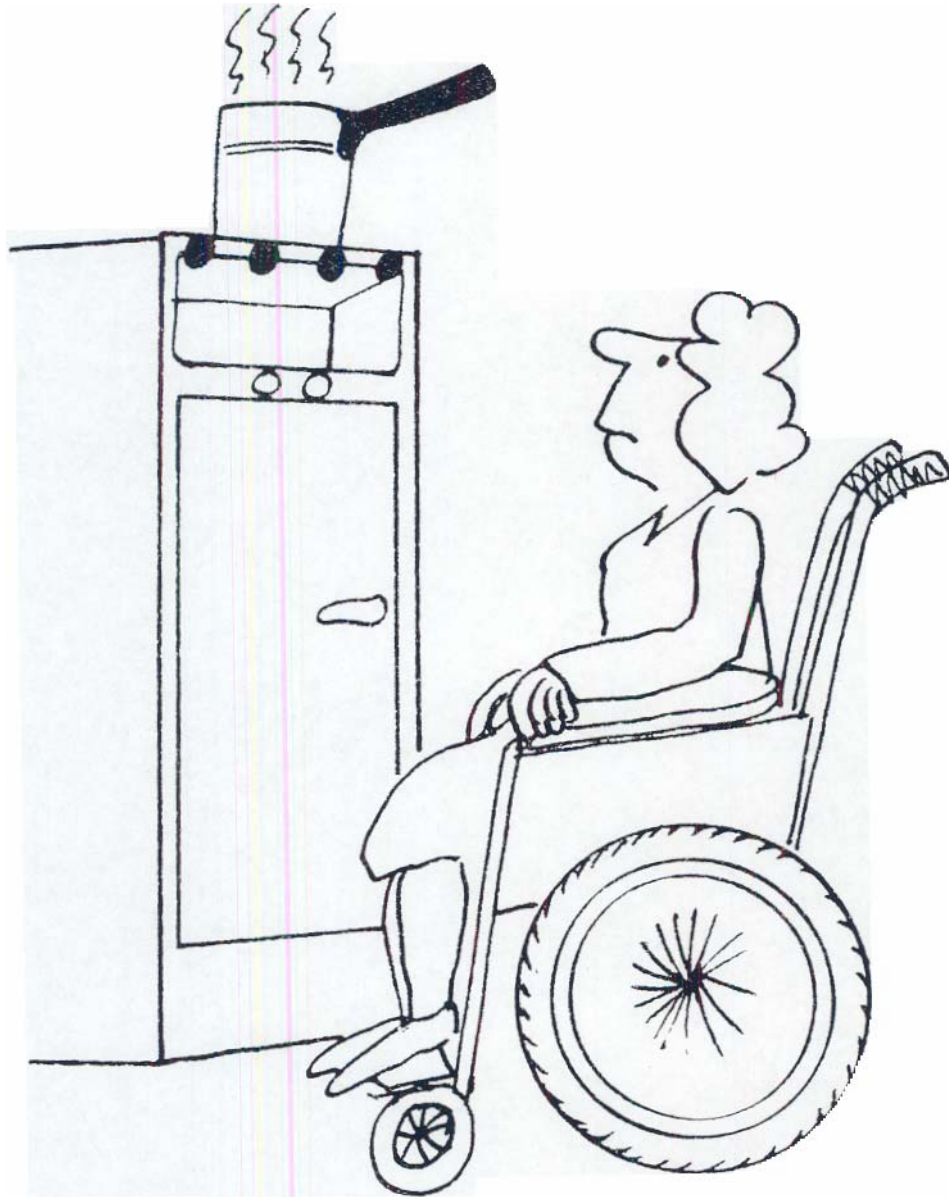
The DHSS are aware that the application form leaves a great deal to be desired, and have requested suggestions for its improvement within the terms of the existing Regulations. We are of the opinion that such changes will not alter the fact that the whole procedure of testing ability in the home is ill-conceived and inequitable, and impossible to administer fairly or consistently. We are also aware, however, that the passage to benefit entitlement could be made easier and less offensive for women who are applying under the existing regulations, and we have therefore made a number of suggestions for reform to the DHSS as an interim measure. These are outlined in an Appendix. We would repeat, though, that this attempt to measure inability to do household jobs is misconceived, and the problems it has raised will never be ironed out by the redesigning of the application form.

2. THE DEFICIENCIES OF THE DOCTOR'S ASSESSMENT PROCEDURE

Once an application for HNCIP is made, a doctor, usually the family doctor, is asked to give details of the claimant's medical history and of her ability to take paid work, and to assess her capacity in a number of functions involved in housework. For this he is paid a fee of £10.00. the meat of the form is in question 4, reproduced in Figure Three below.

**FIGURE THREE: Assessment by the doctor – question 4, Form HA
45**

| Please grade the following functions by ticking the appropriate boxes: | | | | |
|---|------------|--------|-------------|---------------------------------|
| | Impairment | | | Little or no effective function |
| | None | Slight | Substantial | |
| (a) Lifting and carrying (e.g. as in preparing and cooking a meal) | | | | |
| (b) Reaching out and up (e.g. in reaching shelves and dusting) | | | | |
| (c) Bending (e.g. to reach oven or low cupboards) | | | | |
| (d) Standing -including the function of balance (e.g. while ironing or queuing) | | | | |
| (e) Kneeling (e.g. the clean floors) | | | | |
| (f) Walking within the home (moving from room to room or to outside toilet) | | | | |
| (g) Walking outside the home (e.g. to go to the shops) | | | | |
| (h) Climbing the stairs | | | | |
| (i) Manipulative ability (e.g. turning taps, peeling vegetables) | | | | |
| (j) Planning (e.g. organising shopping or arranging daily routine) | | | | |
| (k) Communication (e.g. dealing with tradesmen, shopping) | | | | |
| (l) Sustained exertion (e.g. cleaning windows or oven, ironing) | | | | |



We have found that, even where the doctor believes that his/her patient is substantially disabled, there is a tendency to over-estimate her ability to do housework. This is partly due to the design of the form, its wording, and the examples of activities given for guidance, but probably also reflects the ignorance of many doctors as to what housework actually involves. Household tasks commonly require a combination of physical functions and, where many are slightly impaired, the cumulative effect may be one of substantial impairment. But this is not necessarily reflected in the answers elicited by the questionnaire which doctors are asked to complete. Furthermore, the examples suggested for guidance are

often taken as the norm by busy doctors, and few take the trouble to elaborate on their assessment of the claimant's ability to do specific jobs. For instance, the example suggested for 'lifting and carrying' is 'as in' preparing and cooking a meal'. But the assessment of a woman's capability to do this job is likely to be very different from that of, say, carrying heavy shopping or a Hoover up a flight of stairs, or of lifting wet laundry from a washing machine or a toddler out of the bath.

- Mrs. Weale was a professional singer and managed her own dance band. She and her husband had planned to open a nursery/play school (she is NNEB qualified). They had carried out alterations to their house and had been granted permission to take eight children when she had a pulmonary embolism due to the contraceptive pill. Several months later she suffered a coronary thrombosis, and has since had several heart attacks which led to fourteen admission to hospital in four years. Her husband is severely disabled and wears calipers. They have three school-age children, one of whom is a mongol, attending a special school, and another suffers from asthma. Mrs. Weale is unable to do any housework and has to rely on her 70 year old mother, friends and a cleaner to do all the heavier jobs. She can do light dusting and some tidying up, and she can sometimes manage to wash up the breakfast dishes during the morning. She can't make beds, and the cleaner changes the sheets fortnightly and also does the hovering. Most of the afternoon is spent preparing an evening meal, with frequent rests on doctor's orders. Mrs. Weale's mother comes in once a week to do the washing and ironing, and her neighbour takes her to the shops in her car and carries her bags, or does it for her.

Mrs. Weale's application was refused, and she appealed. Although her doctor was entirely sympathetic with her application, he had completed the questionnaire according to the examples given. Thus only those functions suggesting considerable exertion were assessed as substantially impaired, whilst the rest were recorded as only slight. Mrs. Weale asked him to provide a further letter about her difficulties, and took a letter from her consultant to the tribunal, and her appeal was allowed.

The inadequacies of the doctor's questionnaire are illustrated by the fact that, whereas the doctor may agree with the claimant's self-assessment in answering his question 5 ('Is the claimant's statement of her limitations broadly consistent with your own assessment of her limitations?'), his/her grading of her functional ability is often noticeably lower, a fact which the doctor does not explain and which tribunals often ignore, at the expense of the claimant's entitlement to benefit.

- Mrs. Franks is 51 and suffers from a hiatus hernia and angina. She lives with her husband in a bungalow to which they had to move because of her disabilities. It is not adapted in any way, other than the kitchen wall cupboards being a little lower than normal. In her application form for HNCIP, Mrs. Franks stated that she could not bend, stretch, lift, carry shopping, walk up and down inclines, or use public transport. She relies on her husband to do all the household jobs that involve bending, stretching and lifting, when he returns from work, and any attempts to do these herself result in pains across her chest and extreme breathlessness. He does the vacuuming and cleaning, as well as the cooking if she has had a bad day. She can dust, iron sitting down, and use an automatic washing machine. Her neighbour has done the shopping for her for many years. Mrs. Franks has had to leave two jobs as a result of her condition, the last as an assistant in a photographic shop, and her doctor stated in his report that she should not take paid work. In assessing the extent of her impairment, he agreed with her self-assessment, which indicated substantial difficulty with shopping, cooking and cleaning, and little difficulty with washing because of her machine. However, in his questionnaire this substantial impairment was not corroborated. Instead, he said that she had slight impairment with lifting and carrying, bending, standing, kneeling and walking outside, and no impairment in the remainder. At the appeal hearing, Mrs. Franks' neighbour - a hospital nurse for 40 years before retirement - described Mrs. Franks' extreme breathlessness and pain, especially in the mornings, and explained that she had been doing her shopping for her since her own retirement. Her appeal was turned down.

The experience of the Child Poverty Action Group's Citizens Rights Office has highlighted how some doctors simply do not understand what the benefit is about. Some do not realise that the case will be dealt with by lay people who are unlikely to appreciate the significance of a diagnosis and brief notes, and they do not appreciate just how literally some of their comments will be taken. A number of cases have been won after an initial refusal by going back to the doctor for further clarification or, where this is not forthcoming, by getting a second opinion (see page 52). Most doctors, though, have been willing to provide further comments and a number of them have been surprised to discover that an application had been refused on the grounds of their own report.

- Mrs. Miller has progressive osteoporosis, which resulted in the collapse of her spine. Her doctor reported that she is in considerable pain most of the time, and has to take large doses of analgesics. She is at times in such severe pain that she is unable to get out of bed and, although she is encouraged to sit, she cannot walk about. During less severe periods, Mrs. Miller is still extremely limited in what she can do in the home. She cannot use a Hoover; clean floors, windows or the bath; peg out the washing or handle a normal wash load; iron; make beds; reach up to shelves; polish furniture; lift or carry anything slightly heavy; wash up heavier pans. She can prepare vegetables, go shopping in an invalid tricycle and a wheelchair, and can help with some lighter washing up. Her application was refused, and she appealed. At the hearing she presented a further letter from her doctor confirming her statements, and a list of all the jobs she cannot do in the home. The appeal was allowed.

In quite a number of cases, the doctor was simply unaware of the extent of functional impairment because (a) s/he was new to the practice or to the patient, (b) s/he only saw the patient on rare occasions at the surgery, or (c) s/he only issued repeat prescriptions by post or via another member of the family, as in Mrs. Moore's case.

Mrs. Moore was refused the HNCIP. She wrote:

'I have suffered from progressive rheumatoid arthritis since about 1942, and despite many forms of treatment and drugs, I have gradually had to resign myself to being housebound and knowing that one has to try and struggle on, and accept the fact that in some things there is no cure. It is amazing, as I am sure you will realise, how one does struggle on, finding various sorts of ingenious ways to keep some semblance of order in the home, but only the patient (and his or her nearest and dearest) know of the extreme difficulty, pain and exhaustion which comes from this struggle. One usually tries to smile, and put on a brave face if anyone comes into the home, not to appear to be forever moaning, thus they very often don't realise the full extent of one's disabilities. I have had home helps for a few hours weekly in the past, but owing to the ever increasing charges, and the fact that my husband was made redundant after 42 years of service, we were forced to give this up ... Thus we have settled down to a very quiet and humdrum existence, doing what we can when we can.

'In 1960 I underwent an operation for Hiatus Hernia and replacement of a valve in the Oesophagus with a plastic one. Unfortunately, owing to my being sewn up too tightly, this started a nightmare of trouble in addition to my arthritis. I was told after many visits to the hospital that further surgery would be too dangerous, and that I would have to learn to live with it, and take very small meals. No one seemed to want to know to be honest. Part of the problem in this respect consists in the fact that whenever I eat or drink, the valve does not respond, so the food etc lies heavy on my chest, causing severe drowsiness, and slowing down of the circulation generally, going on to a stupor state or complete unconsciousness. These spells last anything from half an hour to several hours, after which I am completely slowed down mentally and physically; in fact, in a 'stupid' state. Hardly a day goes by 'without at least one of these attacks, and although we have tried many things hoping to improve matters. I have just had to try to learn to put up with it. To be honest it has nearly driving me dotty - whereas once I was an efficient secretary, in addition to running my home, and enjoying many interesting hobbies, now I just get through each day as best I can.

'Since this operation, I have been subject to very bad side effects from the drugs for my arthritis, such as spells of continuous vomiting and continuous diarrhoea, weeks on end of rashes, and for the past ten years very severe psoriasis over a great deal of my body ... I can only say that it is only by sheer will-power that I have tried to come to terms with the restrictions of loss of power in my limbs, and severe pain throughout the spine and joints generally, and of course regularly taking of my drugs ...

I have had to give up all thoughts of entertaining visitors, or visiting. In fact, I have been unable to go out on my own since 1960, partly because I can only manage a very short distance without sheer exhaustion or my legs giving out, and partly because of the blackouts I am not really safe. I am unable to carry anything, and have had to rely on my husband getting in shopping, most of which we try to get in bulk. But he has severe spondylo-lithesis of the neck, and has had arthritis of the hip for some years, and now also has a heart condition. We do have a very old car which my husband tries to keep roadworthy, as it is the only means that once in while, weather and me permitting, he can take me out for a short ride; even then I am still subject to these blackouts, and half the time I wish I hadn't gone, as he has to pull into a layby and give me brandy until I come round.

'After my operation we moved from a house in Weymouth to this bungalow, but because I have not been well enough to get out and make a new circle of friends, I seldom see anyone. I registered as disabled in 1974. I had resisted until then, not liking the idea, but as it was then necessary for me to be so registered before I could obtain some aids, I agreed. I keep in touch with the local social services, but do not worry them, as I know they have many problems and people worse off than myself, but I do know that I can always call them if necessary. Indeed, it was the Head of the social services who drew my attention to the HNCIP, and sent me all the papers relating to it, so they must have thought that I would qualify. I must say I was much puzzled by the officer's reply with their refusal. As the office is not too far away, my husband called there one morning, just to enquire what the dates mean, but there was only a young lady there and she didn't know either. All she

said was, "You can take it from me that your wife doesn't qualify." It is all very well saying "you can appeal against it" but people in my position can't go dashing off here and there, precisely because we can't get about. I stated on the form that I could only do things with great difficulty and pain, and when my husband saw the doctor on my behalf recently for further prescriptions, he told him that all he was sent was a questionnaire asking for particulars of my health history. He did not make a special call to see just what I could or could not do ... my doctor's practice has got so busy this last year or two, with so many new houses around us, that unless something unforeseen happens, I do not worry him - rather my husband calls for further prescriptions, as I have mentioned. Perhaps I should also mention that in addition to the above, I have also had operations for gall-bladder removal, tonsillectomy, and a full dental removal during these difficult years, so I do know a bit about illness. '

- Mrs. Black had recently moved when she applied for HNCIP, and her new doctor disagreed with her self-assessment. She had congenital dislocation of the hips and osteo-arthritis, and had stated that she could not do, any shopping or cleaning, and had substantial difficulty with cooking, Washing and ironing. In his own assessment of her functional ability, the doctor stated that she was substantially impaired in kneeling, walking outside the home and in climbing stairs, but that she had only slight impairment in most of the other activities and none in planning, communication and manipulative ability. Mrs. Black's application was refused and she appealed. At the tribunal hearing, she was represented by a Welfare Rights Officer who had secured a medical report from her previous doctor who was very familiar with her case. He confirmed that she was much more severely handicapped than the first doctor had indicated, and in particular mentioned substantial impairment in bending, reaching, lifting and carrying, and standing, and in doing anything requiring sustained exertion. The appeal was allowed.
- Mrs. Peters wrote: I very rarely go to see my doctor, only for a repeat prescription, so I felt he only saw me at advantage, not knowing the struggle I have at home.'

A number of women who wrote to us felt that the doctor had taken insufficient care in filling in the assessment form.

'My doctor was only in the house a few minutes, he just looked at my foot and asked me a few things and he was gone, it was his report that turned me down. They said I could appeal, but I don't feel up to it to face a tribunal. I feel so hurt. I have been a prisoner for the last three years, and it would be a job for me to meet people again. I need help bad, but I don't know who to turn to.'

'My doctor visited me but he filled in his forms without even examining me. Therefore he said I could do all the things that were questioned on the form.'

'I told the doctor who visited me that, while I managed to stagger around my home, once I stepped outside I cannot stand without assistance and it surprised me to hear him say that he was not interested in what I could or could not do outside. Actually, I am a prisoner in my own home.'

- Mrs. Beaton suffers from polio and asthma. Her own doctor refused to examine her and she was therefore assessed by a doctor sent by the DHSS. He began by saying, 'Keep it short and sharp and we'll get through it quicker.' He did not ask her about her repeated falls nor about the asthma. He tested her ability to reach by asking her if she could reach a jigsaw puzzle placed on top of a wardrobe which was only two inches higher than herself.

3. THE INSURANCE OFFICERS' DECISIONS

We have looked so far at the difficulties faced by claimants and doctors trying to make sense of the assessment forms and at how their failure to complete these forms accurately can result in patently wrong decisions. The stage of the claims process about which we know the least is the crucial one at which the insurance officer makes the decision on the

claim. What is the insurance officer supposed to make of the claim forms after the claimant and the doctor have ticked the various boxes? Are insurance officers given any guidelines as to what weight should be given to a woman's ability or inability to perform each of the activities listed or are they all assumed to be of equal importance? And are they advised as to how many ticks in each column constitute incapacity to perform 'normal household duties'? What weight, if any, is given to the claimant's self- assessment if it conflicts with that of her doctor?

We have been informed that there are no such guidelines issued to help insurance officers interpret the completed assessment forms. Thus the burden of defining what is meant by incapacity to perform 'normal household duties', in practice, has been shifted on to individual insurance officers and, in some cases, local insurance tribunals, with the aid of a doctor's assessment. It is unlikely that any precedents will be established by the National Insurance Commissioner (to whom appeals from local tribunals are made) which will give any very specific guidance as to how to interpret the 'household duties' test in individual cases. In the one decision made so far by the Commissioner he emphasised that the relevant regulation:

'requires a subjective test, in that it is the claimant's own incapacity for normal household duties which is to be considered, judged, however, by reference to the objective standard of the duties which a capable house- wife would perform were she in the claimant's situation, in that particular household and in that environment.' [8]

But what does the average insurance officer know about 'the objective standard of duties which a capable housewife would perform were she in the claimant's situation...'? And how many male insurance officers would have any idea of what is actually involved in meeting those 'objective standards'? We suspect that many would probably underestimate the physical and mental effort required in doing housework and bringing up a family. And, of course, the difficulties they face in making a fair decision are aggravated by the inadequacies of the evidence upon which

they often have to make it, as described above. This is again brought home by the National Insurance Commissioner's observations:

'I would add that a claimant who attends a local tribunal hearing gives the statutory authorities an opportunity to explore the claimant's capacity, as well as incapacity, for household duties, the evidence hitherto being confined to that given in the prescribed forms. 'The completion of the forms cannot provide for the infinite variety of household circumstances, and in my opinion the evidence of claimants and any witness attending should be taken by local tribunals when the opportunity to do so presents itself. The record of such evidence, and the facts found are, in the event of an appeal, of the greatest value to the Commissioner.' [9]

Surely this applies to insurance officers also? And if one takes the Commissioner's remarks to their logical conclusion, the only way that insurance officers (and tribunals) could begin to carry out their decision-making realistically would be if they visited each claimant in her own home. A number of women made this very point and complained of the impossibility of convincing the authorities of their inability to do housework by means of forms.

'How can any committee say we are not incapable of doing our housework when they haven't seen us struggling?'

'What do these officials know of any domestic situation if they don't take the trouble to find out at first hand by making a personal visit to assess the circumstances as stated in the application form, instead of what I appears to be out of hand rejection?'

'What does one have to do to convince these bureaucrats what incapacity is?'

With only the claimant's and the doctor's assessment forms to go on and with no clear guidance as to how these should be interpreted, we do not

see how insurance officers can be expected to make fair and consistent decisions. They are being asked to perform an impossible task and all the cases quoted in this report bear witness to that fact.

- Mrs. Andrews wrote: 'I have applied for the disabled housewives benefit - the doctor having certified that I was unfit for paid work. My claim has been disallowed on the grounds that I have not "proved" that I cannot cope with all household duties. As my complaint is spinal and my difficulty due chiefly to excessive pain, I am at a loss how to "prove" the degree of pain, etc. I was a fully qualified teacher and had to give up my job. I have had four major operations (laminectomies) on my back, each of which has worsened my condition. My husband has to do many of my household duties – e.g. Hoovering, washing floors, shopping, windows, beds, ironing, etc, but even so I have been informed that I must "prove" this. I have asked how it could be proved - but have simply been disallowed. Could you please help at all or would my case help to get the rights for housewives in similar circumstances?'

- Mrs. Rose suffers with fibrosis of the lungs, hypertension and spinal osteo-arthritis. She stated that she is unable to do any cleaning, has substantial difficulty with shopping and cooking, but only slight difficulty with washing, as she has an automatic machine. Her doctor confirmed the extent of her disability in his assessment: no function at all in reaching, kneeling or sustained exertion; substantial impairment with lifting and carrying, and bending; slight impairment with walking outside and climbing stairs. Mrs. Rose's claim was refused, and she asked her Citizens Advice Bureau to help her appeal. They represented her at the hearing, and she won.

- Mrs. Houghton is incapable of speech and of any coherent understanding of any matter of detail. She had three strokes about three years ago and had been in this condition ever since. She appealed against the refusal of HNCIP. When it emerged at the tribunal hearing that she was in receipt of the higher rate attendance

allowance, the insurance officer presenting the case for the DHSS said that he would not oppose the appeal and Mrs. Houghton was granted the HNCIP.

While we consider that most of the unfair decisions known to us are the result of the inherent difficulties involved in applying the 'household duties' test, there is also evidence in some cases of a clear misinterpretation of the law. We have had details of many cases where the woman was able to do the housework only with substantial help from other members of the family. In some of these cases the insurance officer appears to have taken the view that this help disqualified her. This is directly contrary to the regulations which make it clear that the test is whether a woman can do the housework without 'substantial assistance from or supervision by another person'.

- Mrs. Steele is a spastic, and has an arthritic flat foot. She cannot bend down, reach up or forward, and has loss of balance. She cannot kneel, and can only walk very short distances. Her application was refused and she appealed unsuccessfully. Her husband attended the hearing on her behalf. The insurance officer emphasised the amount of help given by him and her three children, the eldest of whom is 12, who do most of the housework. Mr. Steele does the heavier jobs and the shopping in the evenings. He asked the Chairman what the situation would have been if he and his children had been unable to help her or to live at home with her, and he said that this would be a different matter. "To me that meant that the pension is still only for single disabled women and not for married women," Mr. Steel told us. "Why should my wife be penalised for our three children and me *having* to help her? It just doesn't make any sense to me "

In the case that went to the National Insurance Commissioner, the submission put forward on behalf of the insurance officer was that 'light household duties were now the claimant's normal household duties, and because she was able to perform them to a substantial extent she failed to qualify'. The National Insurance Commissioner fortunately rejected this argument, pointing out that:



“This approach to normal household duties ... would lead to what I think is an unacceptable conclusion. The greater the incapacity the less can be done; a claimant, whose incapacity was almost total and whose only household duty, for which she had a slight impairment of function, was, for instance, dusting from a wheelchair, would fail, on the ground that she performed her normal household duty to a substantial extent. Such a result seems to me incongruous and wrong.’[10]

But how many women had already been turned down by insurance officers taking this very approach?

The National Insurance Commissioner also made it clear that for the purposes of the regulations the term ‘substantial’ was to be interpreted to mean ‘considerable’, and that therefore the fact that a woman ‘can perform some duties to a limited extent’ is not sufficient to disqualify her. [11] Yet it appears that many women have been disqualified for this very reason. The submissions made to appeal tribunals by insurance

officers have argued that 'the claimant should not be regarded as incapable of performing to any substantial extent normal household duties unless her overall performance is extremely poor or the range of things she can do is very narrow, i.e. light dusting at a certain level only'.[12] It is to be hoped that this narrow interpretation of the regulations has been revised in the light of the National Insurance Commissioner's decision.

The poor decision-making that is bound to result when the interpretation of such a vague test is left so much to the judgment of individual officers means that the appeals system has a crucial role to play in providing a safeguard against unfair and inconsistent decisions. We turn now to look at how far the appeals tribunals are fulfilling this function.

4. THE DIFFICULTIES OF APPEALING

The first test of whether, the appeals system is safeguarding claimants' rights is whether unsuccessful claimants who feel they have been turned down unfairly make use of it. There is a tendency for government officials to assume that it is sufficient to set up an appeals system and to advise of the right of appeal in the decision letter sent to the claimant in order to ensure that dissatisfied claimants will appeal. The many letters we have received from women who have not taken their case any further, even though they felt the decision to be unfair, show that this is not the case. These women have not appealed for a variety of reasons which include: misunderstanding the decision letter so that they are unaware even of the right of appeal; a belief that the insurance officer's refusal meant that they had no right to benefit; inadequate information about why they were refused so they don't know if it's worth appealing; confusion with official forms and social security terminology; fear of official proceedings and uncertainty as to what a tribunal hearing would entail; inability to cope with the stress of an official investigation; a feeling of humiliation at having to 'prove' incapacity before total strangers; resentment at having been asked so many questions in the first place to no avail so that further arguments seem pointless and degrading; fear of being branded a 'scrounger'; difficulties in attending a tribunal

because of their disability - some tribunals are not easily accessible to disabled people; inability to commit themselves to a specific date for a hearing because of a fluctuating condition; fear of going alone where there are no agencies which provide representation in the area or where the woman does not know of any such agency or has difficulty in contacting one.

The following are examples of women who were turned down but who were reluctant to appeal. Mrs. Boyd's case is quoted in greater detail later.

- Mrs. Tate worked as a clerical officer in the civil service for many years until she was retired prematurely after the diagnosis of grand mal epilepsy. She has since tried to take a cleaning job in her village, but was unable to get through the work, and was asked to leave. 'I honestly feel I could not cope with a job. I could not rely on being there daily. I have been advised not to stand on anything in case I fall (during a fit), so I clean as high as I can reach. I shop with someone or alone only at the village store. I have no concentration or sense of balance. I have fallen several times, but fortunately only one was a bad fall. My husband and myself get through most of the jobs. We have no family. It is not always easy for him. He suffered a slipped disc eight years ago in an accident at work.'

Mrs. Tate's application was refused. 'I do not intend to appeal against the decision, as I do not feel like banging my head against a brick wall.'

- Mrs. Hughes has suffered with angina pectoris for three years, and this has been made worse by two attacks of coronary thrombosis in the past two years. She can manage a few lighter tasks in the home such as dusting and some cooking, but she cannot use a vacuum cleaner, wash floors or paintwork, clean windows, do the ironing, or go out to do the weekly shopping. Her application for HNCIP was refused, although her doctor agreed with her statements on the application form, including her inability to take paid work.

Mrs. Hughes did not appeal because she '... did not think she could endure the mental stress and consequent angina which would be entailed should she have to appear before a tribunal'. She is, however, now considering reapplying.

Mrs. Boyd is 40 and has Arthredesis of the left leg; rheumatoid and osteo-arthritis of the back, arms, hands and right leg; grand mal epilepsy; and a lung condition. She has been confined to a wheelchair since 1972. She can plan her activities, but she cannot prepare or cook a meal, do the shopping or the housework. These are done by a home help who calls weekly. She also helps Mr. Boyd lift his wife in and out of the bath. The Boyds live in a council bungalow which has not been adapted in any way, other than the sink and work tops in the kitchen being lowered to the height of a sitting person. The cupboards are so placed that even Mr. Boyd has to stand on a chair to reach the top shelves. Mrs. Boyd receives the Mobility Allowance and the lower rate Attendance Allowance, but her application for HNCIP was refused, on the grounds that she could still do many household jobs.

Mr. Boyd wrote: 'After long and careful deliberation and much discussion it is agreed that no further action will be taken either to appeal or to make a further claim to this benefit ... It is not worth the frustration, worry and time involved to try to convince a panel of officials from the DHSS that a person confined to a wheelchair (supplied by the DHSS incidentally) is unable to do anything like normal housework, shopping, or other activities that an able-bodied woman can do ... Would the local authority deem it necessary for us to have the services of a home help and a district nurse if Mrs. Boyd were capable of performing normal household duties, and to be sufficiently mobile to bath herself without both the nurse and myself lifting her into and out of the bath? I think not. Furthermore, would the DHSS Blackpool have awarded her the Attendance Allowance (lower rate), Mobility Allowance, and myself the Invalid Care Allowance, if she had not in previous years satisfied the criteria laid down for these benefits? Would she have been informed, also by the DHSS in 1973, that she was entitled to an invalid vehicle but was unable to have I one because she suffers from epilepsy? Again I

think not. Yet when an application is made for HNCIP it is refused because a case had not been made out to the effect that she is incapable of doing the things she claimed she was incapable of doing. This is just official clap-trap, and we v/ant no part of it anymore. We are no longer interested in the piffle that flows from the Department headed by Mr. David Ennals or that of Mr. Alf Morris. In our opinion HNCIP is a benefit that isn't, luring severely disabled people into believing that there is something to be gained by making an application. It's a non-starter and a damp squib. The people who administer the HNCIP have apparently no conception of what a wheelchair is, and much less of what a disabled person can do who is stuck in one all of their waking- hours.'

- Mrs. Cross is 54 and had a brain operation ten years ago which resulted in a continuous and severe abdominal pain which cannot always be relieved by the strongest pain killers on prescription. She also has an irritable bowel syndrome, asthma, and arthritis in the knees. Her husband has a 90 per cent disability. Mrs. Cross hasn't worked since they began a family, and they now have six children, the youngest of whom is a dwarf. She is unable to do much housework, and has employed paid help for many years. The eldest daughter does most of the washing and all the ironing. Mrs. Cross told us, 'I do function as a housewife, but only with much difficulty and I am seldom free of pain.' Her claim was refused and she did not appeal.
- Mrs. Edwards has had a long history of operations which have left her very weak and unable to take paid work or do much in the home. In her early 20s she had a major kidney operation, and has had kidney pain ever since. This was followed by removal of the thyroid gland, removal of the appendix and a hysterectomy due to cancer. The hysterectomy resulted in infected tissue leading to abscesses which cause her constant pain. She also suffers from chronic nephritis. 'The pain is so severe I frequently spend my day vomiting. There is absolutely no question of my going out to work, although my husband is on a modest wage. No employer would tolerate my incidence of ill-health. My husband more often than not

has to make his own meals, and for a long time has done the housework. I struggle to do what I can, but I'm afraid that it amounts to very little.' Her claim was refused and she did not appeal.

- Mrs. King has rheumatoid arthritis and has been unable to work for nine years. She is shortly going into hospital for an operation on both feet. She is on daily steroid injections, and has great difficulty in doing the housework. Her application for HNCIP was refused, and she did not appeal: 'Unfortunately I didn't appeal as I didn't think that I stood much chance of winning, although I cannot work or do much housework, etc. I am one of those people who look as though nothing is wrong with me, but on my bad days I can't dress or get out of the house at all so people do not see me at my worst. Other times I try my best to keep myself tidy and as mobile as I can which of course is how the doctor saw me when he visited me (about the benefit) ...I bitterly regret not going ahead with the appeal as I realise now that your organisation must have evidence to help people like myself.'

The next two cases illustrate the difficulties that those who do appeal can face.

- Mrs. Whalley has very poor circulation which results in poor vision, collapsing, and shortness of breath. She pays a home help to do the heavier household jobs, and her friends, neighbours and daughter help her with the shopping and cooking. She sleeps in the same room as her daughter so that she can be helped at night. Mr. Whalley is deaf.

Mrs. Whalley's application for HNCIP was refused. 'Upon receiving their letter (refusing benefit) my husband phoned them and asked them for a copy of their Act so that we could read what these sections stated. He was told that he couldn't have a copy as it didn't matter unless he appealed, and then a copy would be available at the "tribunal" for you to read.' She appealed, but the appeal was mislaid, and the local office asked her to appeal again,

which she did. Mrs. Whalley was unable to attend the first hearing because of ill-health, and her solicitor advised her husband to ask for an adjournment until she was able to attend in person. 'If seeing is believing, as was stated to my husband, how have they assessed other people's claims fairly without having to appeal?'

Mrs. Whalley was able to attend the second hearing, and her appeal was allowed.

- Mrs. Green rang to say that she had appealed against the refusal of benefit. The only way she could get to the tribunal safely was by ambulance which would cost her £9. She rang up the clerk to the tribunal to ask whether she could claim this as travelling expenses and was told that they would pay for a taxi but not an ambulance. She also enquired about access at the tribunal and discovered that the hearing took place on the second floor of a building that did not have any lifts. Mrs. Green does not think she will be up to attending the tribunal in these circumstances.

5. THE APPEAL TRIBUNALS' DECISIONS

The above cases illustrated how the appeals system cannot safeguard the rights of those women who, for one reason or another, do not appeal against the insurance officer's decision even though on the face of it they would appear to satisfy the 'household duties' test. How effective a safeguard are the tribunals for those who *do* appeal? In an attempt to answer this question we begin by comparing the decisions reached in three pairs of virtually identical cases for which we have all the appeal papers. The opposite decisions reached in these cases give grave cause for alarm about the quality of the tribunals' decision-making.

Mrs. Wilson and Mrs. Stone

Mrs. Wilson is 50 and suffered a Myocardial Infarction. She also suffers with angina. She said she was unable to do shopping, washing and cleaning, and has substantial difficulty with cooking. Her doctor stated

that she was substantially impaired in any job needing sustained exertion; slightly impaired in lifting; carrying, reaching out and up; walking outside; climbing stairs; planning, communication. He said she had no impairment in the remaining five functions.

Mrs. Wilson was represented at the hearing by a Welfare Rights Officer. The insurance officer said that the Wilsons' ground floor flat must be taken into account, but her representative held that the doctor had been aware of her accommodation since he visited her at home to complete his report. *The appeal was allowed.*

Mrs. Stone is 42 and suffers from congenital heart disease, aortic stenosis, and old healed pulmonary TB. She stated that she can't do shopping or washing; has substantial difficulty with cleaning, and slight difficulty with cooking. Her doctor stated that she was substantially impaired in kneeling, walking outside, and any sustained exertion; slightly impaired in reaching, bending, walking inside, and climbing stairs. She had no impairment in the remaining functions

Mrs. Stone was not represented at the tribunal. *Her case was lost.*

Mrs. Hart and Mrs. Adams

Mrs. Hart suffers from rheumatoid arthritis in the hips and knees. She is also a diabetic. She stated that she had substantial difficulties with all four activities. Her doctor stated that she had no function with kneeling; substantial impairment in bending and walking outside; no impairment in other activities.

Mrs. Hart was represented at the hearing by a volunteer from the local Citizens Advice Bureau. *Her appeal was allowed.*

Mrs. Adams suffers from rheumatoid arthritis in her wrists and feet. She stated that she had substantial difficulty with all four activities. Her doctor reported that she had no function with kneeling; substantial impairment in lifting, reaching, manipulative ability and sustained

exertion; slight impairment with bending, standing-and climbing stairs; and none in the remaining four activities.

Mrs. Adams was not represented. *Her appeal was turned down.*

Mrs. Turner and Mrs. Bates

Mrs. Turner suffers from rheumatoid arthritis, a stomach ulcer, high blood pressure, sinus difficulties and recurring depression. She stated that she can't do shopping and washing, and has substantial difficulty with cleaning and cooking. Her doctor said that she had substantial impairment in reaching kneeling and sustained exertion; slight impairment in lifting, standing walking outside, and climbing stairs. There was no impairment in the remaining five activities.

Mrs. Turner was represented at the hearing by an officer from a local rights centre. *She won her appeal.*

Mrs. Bates has arthritis in the hands, elbows, feet and cervical spine, and Myasthenia Gravis. She is unable to do washing and has substantial difficulty with cooking, cleaning and shopping. Her doctor stated that she had substantial impairment in lifting, kneeling, sustained exertion and manipulative ability; slight impairment with reaching, bending and climbing stairs; and no impairment with the other five activities.

Mrs. Bates was not represented. *She lost her appeal.*

In other cases, the disabling conditions are not necessarily comparable, but the emphasis given to their effects by each tribunal are entirely different. In the cases of **Mrs. Lane and Mrs. Peel**, for example, completely opposite importance was attached by the two tribunals to substantial impairment in being able to walk outside the home.

Mrs. Lane is 37 and suffers from incontinence as a result of a fistula of the bladder, and an infected kidney following a hysterectomy. She also gets angina from any effort. She stated that she could not do washing and had slight difficulty with cooking. The questions about shopping and cleaning were not completed, but she had answered that she could not lift

or do housework in the preceding question. Her doctor stated that she was substantially impaired in walking outside the home and sustained exertion; slightly impaired in lifting, reaching, kneeling and planning; and not impaired in the remaining six activities.

Mrs. Lane was represented by a Welfare Rights Officer. *Her appeal was allowed.*

Mrs. Peel has osteo-arthritis of the knees, hips and back, and cervical spondylitis. She has had her left hip joint replaced. She stated that she was unable to do shopping, had substantial difficulty with cooking and cleaning but only slight difficulty with washing since she had an automatic machine. Her doctor said that she was substantially impaired in walking outside the home; slightly impaired in lifting, reaching, bending, standing, kneeling, climbing stairs and sustained exertion; and had no impairment in the four remaining activities.

Mrs. Peel was not represented *and lost*. The Chairman stated that her substantial impairment in walking outside the home was not considered material - it 'really has nothing to do with household duties' (although shopping is one of the four main activities assessed).

We have received a number of letters from women who had already appealed on their own and who had lost their appeals. From the evidence available to us we find it difficult to understand why these women were turned down and suspect that, had they been represented, the outcome would have been rather different.

- Mrs. Roberts suffers from Retinitis Pigmentosa, bilateral cataracts and deafness. Her consultant states that she cannot work. She finds shopping, cooking and ironing very difficult, and her husband and two children aged 11 and 15 do most of these for her. Her application for HNCIP was refused and she appealed. At the hearing, Mr. Roberts explained that his wife's sight consists only of outlines and that she can't see the objects themselves in front of her. She can't go out of the house alone as she keeps bumping into things and falling over, and she has to be collected by a taxi if she

goes out. She therefore cannot do the shopping or any housework requiring sight or hearing. The Tribunal found that the degree of incapacity required by the regulations had not been proved, and her appeal was refused.

- Mrs. Carter is 44 and lives with her husband in a bungalow. They were unable to have children because of her ill-health. Thirteen years ago she had a stroke which left her left arm, hand and leg partially paralysed, and she has more recently had two major heart operations, one to replace a valve. She also suffers from angina. Although she has a number of special gadgets, Mrs. Evans is only able to do a few light jobs very slowly, and relies heavily on her husband to do the rest. The amount he does has increased during the past year. She cannot do anything involving exertion as she gets pains across her chest, and cannot grip or carry with her left hand. Mrs. Carter was turned down and appealed. At the hearing the insurance officer emphasised the layout of her bungalow and the number of her gadgets, and the Tribunal found against her.

'We find some difficulty in giving true value to this function scale. In our humbly respectful view, the terms "slight" and "substantial" do not provide sufficient guidelines.' This comment was made by one appeal tribunal in its decision. The overwhelming impression we have received from the appeal papers we have examined is that the national insurance appeal tribunals are totally at sea in trying to adjudicate in HNCIP cases. This is illustrated not only by the inconsistency of the decisions that are emerging but also by the extremely inadequate reasons which most tribunals are giving for these decisions. In most cases they have been no more than a line long, whereas in other kinds of cases national insurance tribunals usually give quite detailed reasons for their decisions.

All the problems facing insurance officers in trying to make sense of the 'household duties' test, which we highlighted earlier, confront the tribunals also. Their only advantage is that, if the claimant attends the hearing, they will be able to question her in more detail and, in that minority of cases in which the appellant has an experienced representative, the case will probably be presented to them in a more

coherent way and additional medical evidence might be provided. In the absence of any clear guidelines as to what is meant by the statutory test of incapacity to perform 'normal household duties to any substantial extent', the tribunals' decisions (like those of the insurance officers) will depend to a large degree on their own personal judgment. This judgment is likely to be very much influenced by factors such as the visibility of the appellant's disability, her personality, the members' values and their knowledge of what housework and care of a family entails. The fact that the members are mostly men is not insignificant and was something that some of the women who appealed were very conscious of.

- Mrs. Warren suffers with arthritis in her arms and neck and recently had a faulty heart valve confirmed after several seizures last year. She can do many household tasks, but only with great pain and difficulty. Her doctor had not examined her before making his report and she disagreed with his assessment. 'The thing that upset me most,' she wrote, was when I went to the tribunal one of the men there suggested that because I am 54 years old and going through the menopause, that all my troubles were imaginary and in my mind.'

The tribunals' difficulties are compounded by the fact that they are comprised of lay people who have no experience of interpreting medical assessments of functional impairments. The assessment of functional abilities for the purposes of social security benefit appeals has, until now, been dealt with exclusively by medical appeal tribunals in which medical expertise is at hand. The tribunals' lack of medical expertise is particularly problematic in cases where the doctor's assessment conflicts with the claimant's self-assessment of her abilities and in cases involving an unusual or invisible condition. Not surprisingly, where the doctor's assessment does conflict with the claimant's the tribunals place all the weight on the doctor's views. But, as we showed earlier, the doctor's assessment is not always an accurate representation of what the woman can do in the house and some women have only won their appeals because they have had a representative who has sought further clarification from the doctor or a second opinion.

Mrs. Dean wrote: 'I am another married woman who has been refused the Housewives Disability Pension. I think it's the laugh of the century, this pension. I have had lung trouble for most of my life, and I have attended Chest Clinic for some forty years. I have two damaged lungs (TB scars) and I have a spinal curvature and arthritis on my spine. I also have chronic bronchitis. The funny part about all this is that I was given a registered disabled persons card in 1954 because I wasn't fit enough to work. Since then my health has got steadily worse. I have Bronchitis four or five times a year, the pain in my back and arms drives me mad, my neck is so bent forward my chin will soon be on my chest. I cannot get my breath in hot weather or cold. I have to get tablets from my doctor to help me breathe, I can't lift anything, or carry things, and I can't walk far before I gasp for breath. My sister comes to do my heavy work, and she takes most of my washing too. I couldn't afford to pay her, my husband has always been a lower paid worker, and he took an extra weekend job to give us a better standard of living, but he had a heart attack over Christmas and he spent ten days in the Coronary Care Unit. The extra job must end, so we are back to square one. I did appeal against the decision of the Insurance Officer, but my application was again turned down. I felt so bitter about all this, I have written to the head doctor at the Chest Clinic, and I have asked my own doctor to help. I intend to fight this thing. Why decide to help the disabled housewife if none of us are going to get this help?'

- Mrs. Judge suffers from Scleredema, a skin condition which followed Reynaud's Disease (bad circulation) and peripheral gangrene which led to the amputation of several fingers. Her application was turned down because her doctor's report conflicted with her self-assessment, which stated that she could not do shopping, cooking, washing or ironing, and had substantial difficulty with cleaning. His report stated that Mrs. Judge had substantial impairment with lifting and carrying, but only slight impairment with sustained exertion, bending and manipulative ability. The remainder of the activities were not impaired in his opinion. At the appeal hearing the insurance officer remarked that 'From the papers the Tribunal will see that Dr - disagrees with the claimant's assessment of her abilities. *The most weight must then*

be placed on the doctor's opinion and the burden of proof is upon the claimant.' (our italics) Mrs. Judge's representative from the local Citizens Advice Bureau presented a letter from the doctor further explaining the claimant's condition. She pointed out that the skin tissue is continuing to break down on her hands, and that she cannot use water, a major disadvantage with many household jobs. She also argued that Mrs. Judge's body tissues are becoming more rigid, and that this further restricts all her movements. With this further information before them, the tribunal reached a unanimous decision in Mrs. Judge's favour.

- Mrs. Simpson suffers from a malabsorption syndrome which prevents her body from absorbing essential nutrients. She consequently suffers from osteo-malacia (rickets in adults) and weakening of the bones, and is also depressed because of her weakness and pain. She stated that she could not do shopping or washing, only a little cooking, and that the cleaning was done by a home help. Her doctor's report suggested much less substantial impairment, and he disagreed with her self-assessment: 'I would think she is normally able to shop without much difficulty except when carrying heavy things. Should be able to cook normal meals. Otherwise consistent.' Mrs. Simpson's application was refused and she appealed. She arranged for a local citizens rights centre to represent her, and the officer collected extra letters from her specialist, home help and social services department confirming the extent of her disabilities. At the hearing he argued that the doctor's report was unhelpful, as sustained exertion had been confirmed as substantially impaired, and this affected all major household activities. He did not deny that she could do some light jobs, but pointed out that her overall performance was very poor. The appeal was allowed.

Few women who lack a representative are likely to realise the importance of getting further medical evidence when their doctor's report does not tally with their own statements. Failure to do so will almost certainly result in the appeal being lost.

- Mrs. Martin's left arm was paralysed after open heart surgery, in which an aortic valve was replaced. She becomes breathless with any exertion and is therefore unable to do many household jobs. Whereas Mrs. Martin said on her form that she had substantial difficulty with most activities, her doctor agreed with her self-assessment in his question 5 but his grading of her impairment in question 4 was much lower. Her application was turned down and she appealed. At the hearing, her husband said that the doctor's medical report did not do justice to the effects of her condition but he was unable to present any further medical evidence to support his arguments. The Chairman noted that Mrs. Martin 'regards it (the medical report) as incorrect but has no other medical evidence' and that the insurance officer submitted that she had therefore failed to prove substantial impairment. The findings of the tribunal were that 'The claimant has disability but not substantial in relation to household duties. Evidence of neighbours and relatives is not sufficient to out- weigh medical report.' Her appeal was refused.

In some cases where the claimant did go back to her doctor, the doctor refused to give any additional information. In this situation, many women do not know how to go about organising an independent medical report if they do not already have a consultant and the women were frequently reluctant to challenge their doctors' decisions or to go over their heads to a consultant or private doctor for fear of damaging their future relationship with their doctors.

- Mrs. Jarvis has a prolapsed disc, gout, arthritis and Reynaud's Disease. 'I asked my doctor for a letter and he said that it would have to be someone medical who approached him, and didn't add anything for me. I was asked (at the tribunal) why he didn't feel able to add anything and of course had no suitable reply.' Her appeal was refused.
- Mrs. Truman had open heart surgery and cannot exert herself in any way. She and her solicitor tried to get additional information from her consultant, without success. 'The old boys' network is still active, as the consultant that I see would not go against my own

doctor, who sat on the fence while leaving the door open for the future. So unless one can get a favourable letter from one's doctor, it's a waste of time going before a tribunal.' Her appeal was refused.

In contrast:

- Mrs. Barker suffers from Bronchiectasis, Emphysema and Asthma, all of which prevent her from exerting herself. She can't work and her abilities in the home are extremely limited. Her family do many of the jobs in the evenings and on weekends, and a paid help does the rest. Her application for HNCIP was refused and she appealed. Her husband arranged for an eminent consultant in respiratory diseases to attend the hearing as a witness to confirm the effect of her disabilities. Her doctor further confirmed the variable nature of her condition and her inability to do anything at all on bad days. Mr. Barker submitted that his wife's overall performance in the home was very poor, and the appeal was allowed.

The implications of the evidence we have collected are disturbing. Because of the inherent shortcomings of the 'normal household duties' test many severely disabled women who are able to do little or no housework, except with great pain or difficulty, are being refused HNCIP. The appeals system is failing to provide an adequate safeguard against these unfair initial refusals because (i) many women do not appeal and (ii) the tribunals themselves are unable to apply the 'normal household duties' test either fairly or consistently. Many women have finally been granted the HNCIP only because they were able to get the help of an experienced representative to argue their case for them at a tribunal. Nevertheless, the success rate at tribunals has been remarkably high.

By the end of April, of 2,452 appeals against refusal of benefit on the grounds that the claimant was not incapable of performing 'normal household duties', just over half were successful.[13] But for every woman who appealed and won, there will have been scores of others, equally disabled, who have been denied the benefit which should have been theirs.



6. 'THE MORE YOU TRY TO DO FOR YOURSELF, THE WORSE OFF YOU ARE

We have concentrated in this report on examples of the many severely disabled women who have been wrongly denied the HNCIP by insurance officers (and sometimes also national insurance tribunals) because of this misapplication of the 'normal household duties' test. However, as we made clear in Part One, even if the insurance officers had been applying the test correctly, we consider it monstrous that these women, who are unable to go out to work, should be denied a benefit paid to men and single women with the same degree of disability simply because they are able to do housework. We have also argued that, in fact, it is not possible to draw a clear dividing line between those who can and those who cannot do 'household duties'. One of the effects of this is that the more women try to help themselves and to retain their physical independence in the home, the less likely they are to qualify for the HNCIP. Many of the women who wrote to us were resentfully aware of this fact:

'I think if the doctor or social worker had come into my home and it was dirty they would have said I needed help. As it is I think they don't understand any of them what an effort it is to try. And what is the reward for trying?

'I would like advice from anybody who is able to give me some assistance in getting home to these people that I *am* disabled, and unable to carry out what I consider normal household duties. Anyone, however, disabled can modify their activities to be able to cope to an extent, as it has been proved time and time again. Praise is meted out very liberally to many disabled people who show determination and initiative to overcome their disability, but when it comes to housewives, they are penalized for trying to cope.'

'I try to manage as much myself as possible, but in these sort of cases it seems that the more you try to do for yourself the worse off you are! Surely you shouldn't have to be confined to a

wheelchair to qualify for this allowance; we are all fortunate enough to be able to take a job, and my goodness what a godsend £10.50 would be’.

Others were upset at having to prove that they were totally incapable of anything to qualify:

‘I really was most distressed to see everything written down in black and white that I am unable to do when all the time I have been concentrating on doing as many things as possible. I think it is totally immoral to put disabled people through all that they do.’

‘Do you really have to be a cabbage to get it? They “the tribunal” made me feel I’ve got to be mental to get it.’

The ability to carry out even a few limited tasks is important for the self-respect of many disabled people. Research has shown that women suffering from progressive diseases such as multiple sclerosis or rheumatoid arthritis who are unable to go out to work are likely to do all they possibly can in the home for as long as possible.[14] Similarly, care of oneself and of one's home can be an important rehabilitative goal. Considerable public funds are invested in trying to rehabilitate disabled people in order to ensure that they can regain as much independence as possible, even if they will never be able to work again. Yet the effect of the 'household duties' test is directly contrary to this key element of official policy. What motivation is there for the disabled to respond to the attempts at rehabilitation made by doctors, physiotherapists, occupational therapists and so forth when they know that their chances of qualifying for an income maintenance benefit are being damaged -or that they may lose the benefit they are receiving -with every bit of progress they make? Furthermore, for those who have made sufficient progress to return to paid employment, there is a 'therapeutic earnings' disregard of £10 which they are allowed to earn before they lose their entitlement to NCIP or to the contributory invalidity benefit - yet another example of how married women without entitlement to contributory benefit are penalised in comparison with men and single women suffering from similar disabilities.

We have been profoundly impressed by the determined efforts to remain active made by many of the women who have written to us. Some have carried on in paid employment as long as they possibly could; others have shown considerable courage and ingenuity in their attempts to participate in home life. Their reward has been a bitter one.

- Mrs. Norton worked as a domestic cleaner until her left arm was amputated above the elbow. She has a prosthetic arm which she finds too heavy to operate, and is now using a cosmetic arm-piece. She lives with her husband and teenage son and daughter in a three-bedroom house in a Greater London suburb, and is no longer able to take a job. Her husband works for the council, doing alternate weekends with days off in lieu; Mrs. Norton's daughter and husband do most of the household jobs, depending on the amount of lifting and manipulative ability involved.

Mrs. Norton's application for HNCIP was refused, and in her appeal statement she said: 'I cannot do my housework without help from my family. I cannot darn socks, or do any needlework now, or do my washing without help, my husband has to get it out of the machine and spin dry it for me. I cannot cut a piece of bread for myself. If I am not entitled to this grant what sort of work can you offer a one-armed woman? I worked right up until November when this came to me, resulting in losing my arm in May 1973. I also cannot lift anything heavy like lifting a full pan of hot fat with potatoes or my meat. This all has to be done for me. Why don't you try for one day just using one arm instead of your normal two.' At the hearing Mrs. Norton was represented by a Welfare Rights Officer. He explained that her condition is worsened by the use of anti-coagulant drugs, and she is a bit slow and unsteady on her feet. However, she makes great efforts to carry on with normal activities, and uses ingenious devices to help her with jobs needing two hands. Describing her ability to prepare a meal? she told the tribunal: 'I use a piece of board with three nails in it. I put the potatoes on the nails and cut them up after peeling them. It is difficult and time-consuming. They are ready cooked for my son when he comes in just after 12.00. He cuts the bread and does mine

as well. I Hoover the front room ... it is difficult to manipulate the Hoover flex and I have to use my teeth at times.' The insurance officer argued that Mrs. Norton was capable of many tasks in the home, and that she had sufficient support from her family. The appeal was allowed, but the DHSS has now appealed to the Commissioner against the tribunal's decision.

- Mrs. Hart has Rheumatoid Arthritis. She wears splints on both wrists and a neck collar. Her doctor has advised her not to work and Mrs. Hart is very limited in that she can do at home. She cannot carry anything heavy, clean windows or Hoover. Sometimes she is in such pain that she cannot manage even to dress. Her application and appeal for HNCIP were refused. Mrs. Hart therefore decided that she must try and seek work, despite her doctor's advice. 'I feel that I must help my husband in some way to keep the home going to clothe my child, etc. But my husband keeps telling me that it will be too much for me. I live in a small village where there is very little work, so it will mean me travelling to the nearest big town.' Mrs. Hart applied for a job at a chicken factory which involved a 40-mile round trip, leaving home at 6.30 in the morning and getting home at 6.45 at night.

The factory refused to employ her because of her disability.

- Mrs. Ash had a major brain operation ten years ago which left her paralysed down her left side. Although she attended for physiotherapy for three years, three times a week, she did not regain the use of her left hand and she is still lame. She is now 58 and her husband is 63. Mrs. Ash worked before and after her marriage and continued to work until she was admitted to hospital for the operation. She has been unable to return to work because of her hemiplegia, and she can do very few jobs in the home. 'I can do bits with (my left arm) but not much. For example, I *still* can't hold a fork so I have never had a dinner without someone having to cut up the meat (like a child). I have worked really hard on myself and have conquered washing up and other light work. I can put the washing in the washing machine and operate the switches with my right hand, but I can't iron at all. I can cook a light meal with

extreme difficulty as I am not safe with hot pans. ..there are 101 jobs I am incapable of doing but I am happy to do what I am able to.' Mrs. Ash's application for HNCIP was refused and her appeal failed. 'I am under the impression the Officer thinks - she has managed ten years, let her get on with it. Yes, I have managed at considerable expense. We aren't grumbling. I earned right up to the time of my operation. I have worked all my married life and the money I saved has gone now on paid services for myself. My savings are exhausted.'

- Mrs. Lake has bronchial asthma, arthritis in her right hand and an ulcer on her left leg. The latter was treated with regular injections until she could not take any more, and she is now on a course of tablets which can only be taken irregularly because of their strength. Mrs. Lake worked until last year as a casual worker and, so that she did not have to give up her job, the nurse used to call at her office to give her her injections. However, she was finally forced to stop working eight months ago. Her husband is registered as disabled. She wrote: 'I never got a penny in my lifetime from the Government. Now they tell me that I can't get one penny of help. My husband has worked for 25 years without one stop even though he is disabled. We never smoke or drink or spend one penny foolishly. I only wish that I could do a little job of work, I wouldn't stoop to ask for help. I pray something will be done in the near future for the forgotten ones.'
- Mrs. Wright has Myasthenia Gravis for which there is no cure. Six years ago she had an eye removed because of a malignant tumour and, although she returned to work after the operation for several months, she was given notice because of her ill-health. She also suffers with hypertension which causes severe headaches, and her blood pressure is checked monthly. Her husband had to undergo open heart surgery some years ago, which led to a less senior job in his firm with much lower pay, and he is registered as disabled. Neither of them is able to do the heavier household jobs, although Mr. Wright is able to wash up and clean windows on occasions, and her cousin comes in once a week to clean the whole house. Mrs. Wright can dust and tidy up, although she cannot move or lift

furniture and cannot iron or carry heavy shopping. Her cousin takes her to the shops in her car twice a week and helps her to select her weekly shopping. 'The cooking that I can do is by no means adventurous. Apart from cleaning potatoes, I use frozen vegetables for most of the year as these need no preparation. Our "afters" comprise of fresh fruit or cakes which I buy from my baker. Luckily, my husband realises my limitations and makes no complaint, although I feel guilty that I am unable to prepare more attractive and appetising meals.' Mrs. Wright's application was refused and she appealed. 'My husband attended the tribunal with me and we left with the impression that because I had managed by relying on family assistance for the past years I was committing an offence by applying for the pension. Because I had had a remission in my illness and had been able to resume my employment previously, it seemed the opinion of one member of the tribunal that - since I had been able to do so whilst suffering from Myasthenia Cravis - I should be able to do all my own housework. Were I able to perform all my household duties and resume my employment, I would gladly do so. But it is the opinion of my GP that this is not possible.'

- Mrs. Banks had tried hard not to succumb to the effects of a progressive I disease. She wrote: 'I have been before the tribunal regarding my claim today, and I have been turned down and feel rather bitter. I suffer with multiple sclerosis but am still on my feet although I walk with a stick and cannot walk more than 100 yards on the level. I get very tired and have to sit down for a "recharge" every few minutes, consequently get very frustrated and depressed being virtually housebound. I could do with the allowance to help pay for help in the house. But seemingly the fact that one has an incurable progressive disease is not sufficient to warrant the allowance.'

References

1. House of Commons Hansard, vol 898, 28 October 1975, col 427
2. House of Commons Hansard, vol 905, 20 February 1976, col 853
3. Draft Social Security (Non-Contributory Invalidity Pension) Amendment Regulations 1977, SI 1977, No 1312
4. National Insurance Advisory Committee, op cit, para 10
5. Ibid
6. Ibid, para 12
7. Leaflet N1214, para 2
8. National Insurance Commissioner Decision CS 3/1978, 20 April 1978, para 14
9. Ibid, para 19
10. Ibid, para 11
11. Ibid, paras 15 and 17
12. This interpretation has been criticized also by the Chapeltown Citizens Advice Bureau Tribunal Assistance Unit in its Observations and Recommendations on the HNCIP, June 1978
13. House of Commons Hansard, 9 June 1978
14. cf Blaxter, M, The Meaning of Disability, Heinemann, 1976

Part Three

Equal Rights for Disabled Women

THE CASE AGAINST THE 'NORMAL HOUSEHOLD DUTIES' TEST

We know that the DHSS is likely to dismiss the evidence presented in Part Two of this report as just the result of 'teething problems' which are inevitable when any new benefit is introduced. We do not accept this. In our view, however much the DHSS improves the application form and administrative procedures, it cannot alter the fact that it is not possible to devise a clear and *workable* definition of what is meant by incapacity to perform 'normal household duties'. The injustices and inconsistencies that have emerged are therefore inevitable so long as the 'normal household duties' test has to be applied.

Our main argument against the 'normal household duties' test is, however, a more fundamental one. The application of this test to married and cohabiting women alone is a blatant example of discrimination on the grounds of sex and marital status. The official justification for this discrimination is that married women are housewives whose 'normal work' is housework and that therefore they should qualify for the NCIP only if they are unable to do this 'normal work' as well as being unable to do paid work. In Part One we established that the assumptions upon which this justification is based are outdated and bear little relation to the reality of married women's employment patterns today. *It is, therefore, in our view, quite unjustifiable to deny the NCIP to disabled married women who are unable to go out to work but who can still do house-work because of a speculative assumption that they would not go out to work anyway.*

It is clear from the evidence that we have collected that married women are having to prove a far greater degree of handicap than NCIP and invalidity benefit claimants in order to qualify for HNCIP. The effect of the 'household duties' test is thus to deny thousands of disabled married women, who are unfit for paid employment, a benefit which is being

paid to men and single women with the same level of disability. The test is also likely to hinder the rehabilitation of many women by discouraging them from trying to improve their functioning on a day to day level in the home.

ABOLITION OF THE 'NORMAL HOUSEHOLD DUTIES' TEST

As was pointed out in Part One, the case law established by the National Insurance Commissioners for the purposes of sickness and invalidity benefit already states that, if a claimant is doing an amount of housework for which payment could reasonably be expected if it were done for an employer, then this should normally be taken as evidence that the claimant is fit for paid work. Doctors are advised of this in the instructions issued to them by the DHSS. This means that disabled married women who are doing all or most of the housework without any great difficulty would probably not qualify for NCIP anyway because they would be assessed as fit for paid employment. Unless the intention is to exclude as many married women as possible from NCIP, we cannot see why the DHSS should need to apply any further test over and above that which already exists for the purposes of deciding whether a claimant is fit for paid employment.

We believe that the arguments for abolishing the 'normal household duties' test are overwhelming. We therefore call upon the Government to pay the non-contributory invalidity pension to married women on the same basis as it is paid to all other disabled people.

We see this as a further step towards the long-term objective of a comprehensive scheme which would provide all disabled people with an adequate benefit as of right. We would add that the difficulties which are being experienced by claimants, insurance officers and tribunal members alike are the result of the attempt to introduce yet another piecemeal benefit for disabled people without a coherent strategy or sound assessment procedure. The Disability Alliance has consistently argued that it is only through the institution of a comprehensive approach that the poverty of many disabled people can be eradicated.[1] This does not imply that existing social security provision should be dismantled and rebuilt, but rather that a comprehensive disability income could be

developed, without enormous administrative difficulty, in phased stages from existing benefits. The DHSS has on several occasions stated that existing benefits will be used as a foundation for improved social security provision for the disabled in the future, and it is therefore crucial that the additional testing of married women in this central benefit is removed before further developments are made.

THE GOVERNMENT'S ATTITUDE

We pointed out in Part One that the HNCIP is only one of a number of social security benefits which discriminate against married women and which treat them as their husbands' dependants. As the London Womens Liberation Campaign for Legal and Financial Independence have argued, 'This web of state regulations serves to hinder the development of women's social, psychological and economic independence by enforcing their dependence on men[2] a point illustrated by one woman who wrote to us that:

'I tried to explain to the DHSS that far from trying to get something for nothing (which they seem to think is the case) I am trying to be less of a burden to my husband, who has lost over £30 in wages in the last month by taking time off work for me.'

The Government's record so far on the elimination of sex discrimination in the social security scheme suggests that the abolition of the 'normal household duties' test will not be achieved without a struggle. It comes as a shock to many women to discover that the Government carefully excluded its own legislation from the scope of the *Sex Discrimination Act*, thereby making a mockery of its professed commitment to equality for women. This means that, while individual acts of discrimination against women are illegal, a discriminatory benefit such as HNCIP is not. The irony is that the HNCIP was put on to the statute book in the same year that the *Sex Discrimination Act* was passed. Until recently, it had looked as though the Government would be required to abolish the 'normal household duties' test, once a draft EEC directive on equal treatment for men and women in matters of social security came into force.[3] But it has now emerged that the Government has been advised

by the European Commission that 'the draft directive does not include housewives, and, therefore, it will not affect the invalid care allowance or the non-contributory invalidity pension.'[4] How convenient for the Government! Not only did its definition of disabled married women as housewives serve as a justification for the introduction of the 'normal household duties' test in the first place, but now it also ensures that this test will not be challenged by the proposed EEC Directive.

It is likely that the Government will counter our demands for the abolition of the 'normal household duties' test with the argument that it would be too costly and that there could be administrative problems in paying the NCIP to those women already turned down. In a parliamentary answer to questions asked by Jo Richardson MP and Peter Bottomley MP, Alf Morris stated that the gross cost of abolishing the 'household duties' test would be about £134 million.[5] But, as we pointed out in the introduction, the Government appears to have no clear idea of how many more women would qualify for NCIP if the test were abolished. The assumption that there are roughly as many women incapable of work as men, upon which this estimate is based, is an extremely vague one and is not entirely consistent with the evidence from 'the 1976 *General Household Survey*.[6] This revealed a marginally lower incidence of chronic sickness and disability which limited activity among women than among men in the 15 to 44 age group, and a considerably lower incidence, especially among married women, in the 45-64 age group. Moreover, even if £134 million were a fairly accurate estimate of the gross cost, the *net* cost, after taking into account the offsetting against other benefits and the administrative savings gained by abolishing the 'household duties' test, is likely to be considerably less. The payment of the NCIP to those already turned down should not cause any difficulty; the DHSS simply has to write to all those whose claims were rejected asking them to reapply as it did in the case of the attendance allowance when the lower rate was introduced. Indeed, a reapplication should not even be necessary as the DHSS presumably has a record of which claimants were turned down because of the 'household duties' test.

A PHASED PROGRAMME

While we are not prepared to accept the argument for the retention of the 'normal household duties' test on the grounds of cost, we do recognise that the question of cost cannot be ignored at a time when public expenditure is still under tight control. We would therefore suggest, reluctantly, that the Government should look at ways in which it might phase out the 'normal household duties' test. This could be done, for instance, by starting with those married women in receipt of the attendance allowance or mobility allowance, and/or it could be done by age group, following the example set by the introduction of the mobility allowance. If the test were phased out by age groups we would like priority to be given to older women. This is because they would otherwise lose out if they reached retirement age (after which NCIP can only be paid to those already in receipt of it) before eligibility was extended to them.[7] If the Government did decide to phase out the 'household duties' test, it is important that it commits itself to a clear timetable and that the test should be phased out as quickly as possible.

A CALL FOR ACTION

The history of social security reforms teaches us that the publication of reports documenting injustices and hardship is not in itself sufficient to achieve change. Such reports can only provide the ammunition for those prepared to fight for social change. The reluctance of the Government to give married women full and equal rights to social security benefits makes it important that all those concerned about the rights of disabled married women should be putting pressure on the Government to abolish the discriminatory and humiliating 'normal household duties' test.

References

1. cf, for example, Loach, op cit
2. London Womens Liberation Campaign for Legal and Financial Independence, the Demand for Independence, revised edition, 1978
3. Draft Directive Concerning the Progressive Implementation of the Principle of Equality of Treatment for Men and Women in Matters of Social Security, COM (76) 650, 1977
4. House of Commons Hansard, vol 941, 13 December 1977, col 453
5. House of Commons Hansard, vol 949, 11 May 1978, col 578
6. OPCS, General Household Survey 1976, HMSO, 1978
7. The injustice caused to those who would have been eligible for HNCIP had it been introduced in 1975 at the same time as NCIP but who were disqualified because they had reached the age of 60 by the time it was introduced, has been documented in an unpublished report by the Disability Alliance submitted to the DHSS in April 1978

Appendix 1

Interim Reforms

Whilst the Government are considering the implementation of our recommendations, a number of useful interim measures could be taken without delay in order to improve the existing application procedure. We repeat, though, that even if all these improvements were made they would not alter the fact that the 'normal household duties' test is unfair and unworkable.

1 The claimant's form BF450

- a) We have recommended to the DHSS that Part 2 of the form should be omitted and that the self-assessment in Part 3 should be similar to the assessment completed in the doctor's report HA45. A much clearer self- assessment of jobs done or not done by the claimant would remove the necessity for the intrusive questions contained at present in part 2.
- b) We have also recommended much greater emphasis on household jobs being done '*by yourself*', particularly in the section on self-assessment.
- c) We would like to see the replacement of the term 'duties' with the word 'jobs' or 'tasks' throughout the form and have suggested that phrases such as 'your ability to look after your family' should be rephrased so as to make them less value-laden.

2 The doctor's form HA45

- a) The assessment form should cover more activities and give more relevant practical examples for guidance.
- b) The medical report should give more space for a description of the impact of disablement on ability to do household jobs if the condition is not straightforward.

- c) A question should be inserted enquiring about the fluctuating nature of the claimant's condition(s), and the extent of her impairment on her worst days.
- d) In interpreting the doctor's assessment, much greater emphasis should be given to the functions of 'sustained exertion' and lifting, since substantial impairment in these functions will affect all others.
- e) Serious delays have occurred in processing appeals where a doctor answers question 3 negatively (i.e. Should the claimant refrain from paid work?) as s/he is instructed not to proceed further with the remainder of the form in these circumstances. This instruction should be removed.
- f) The form should make it clear that the information is for the use of lay people, and that the doctor should therefore explain medical terminology wherever possible. It should also be explained that the report will be seen by the claimant if she appeals.
- g) The form should advise the doctor to make a home visit in order to assess the claimant's ability in relation to her accommodation. If the doctor does not do so, this should be made clear on the form.

3 Refusal of a claim

- a) When a claim is refused, the Insurance Officer's letter of refusal should be accompanied by some information about local agencies to which the claimant can apply for help with an appeal, e.g. Citizens Advice Bureau, Association for the Disabled, Welfare Rights Officer, etc.
- b) The importance of appealing, and personal attendance at the hearing, should be stressed, with reference being made to the refund of travelling expenses and the likelihood of access to the building where the hearing is to be held.

- c) In view of the emphasis placed by the National Insurance Commissioner on the importance of the claimant attending the hearing, the tribunal should be held in a place which is accessible to the disabled. If this is not feasible, could the hearing not take place in the claimant's home? Under the war pension tribunal regulations, the tribunal can visit the home of an appellant too infirm to attend the hearing.
- d) When the appeal papers are sent to the claimant with the date and place of the hearing, she should be informed that - if she disagrees with her doctor's assessment - she will need to bring further information to establish her claim, e.g. a further letter from the doctor clarifying his/her statements, letter from consultant, witnesses, etc.

4 The Tribunal

- a) Any relevant Commissioner's decisions should be attached to the appeal papers for the information of tribunal members and the claimant, since no other guidance on the interpretation of the regulations is available.
- b) If further medical evidence is required and is not to hand, the hearing should be adjourned and the claimant instructed how to go about getting a second medical report and further information from her own doctor.
- c) Consideration should be given to the inclusion on tribunals for HNCIP of at least one person with medical expertise.
- d) Tribunal chairmen should be instructed to give detailed reasons for their decisions, outlining the factors which led them to their decisions.

Appendix 2

Glossary of Medical Terms used in the Text

ANGINA: Spasmodic, choking or suffocative pain -a term often used for the disease or condition producing such pain

ARTHRITIS: Inflammation of a joint

ATROPHY: A defect or failure of nutrition manifested as a wasting away or diminution in the size of a cell, tissue, organ or part

BRONCHIECTASIS: A chronic dilation of the bronchi marked by fetid breath and paroxysmal coughing, with the expectoration of mucus and pus

CORONARY THROMBOSIS: The formation of a clot in a coronary artery obstructing the flow of blood and causing infarction of the myocardium supplied by the vessel (see INFARCTION, MYOCARDIUM)

EMBOLISM: The sudden choking of an artery or vein by a clot or obstruction which has been brought to its place by the blood current

EMPHYSEMA: A swelling or inflation due to the presence of air, applied especially to a morbid condition of the lungs

EPILEPSY: A disease characterised by one or more of the following symptoms: paroxysmally recurring impairment or loss of consciousness; involuntary excess or cessation of muscle movements; psychic or sensory disturbances; and perturbation of the autonomic nervous systems. Symptoms are based on the disturbance of the electrical activity of the brain. Grand mal epilepsy refers to major convulsions and loss of consciousness; petit mal epilepsy to brief blackouts of consciousness with only minor rhythmic movements.

FIBROSIS: The formation of fibrous tissue; fibroid degeneration

FISTULA: An abnormal passage of communication, usually between two internal organs, or leading from an internal organ to the surface of the body. Such passages are often created experimentally for the purpose of obtaining body secretions for physiologic study

GOUT: A condition characterised by an excess of uric acid in the blood, attacks of acute arthritis, and formation of chalky deposits in the cartilages of the joints

GRAND MAL: See EPILEPSY

HERNIA: The protrusion of a loop or knuckle of an organ or tissue through an abnormal opening

HIATUS: A gap, cleft or opening

HIATUS HERNIA: The protrusion of any structure through the esophageal hiatus of the diaphragm

INFARCT: An area of coagulation necrosis in the tissue due to local anaemia resulting from obstruction of the circulation to the area

INFARCTION: The formation of an infarct in the myocardium, as a result of the interruption of the blood supply to the area, as in coronary thrombosis (see MYOCARDIAL, CORONARY THROMBOSIS)

MULTIPLE SCLEROSIS: A disease marked by sclerosis occurring in sporadic patches throughout the brain or spinal cord or both. It is regarded as probably of infective origin. Among its symptoms are weakness, in coordination, strong jerking movements of the legs, and especially of the arms, abnormal mental exaltation, scanning speech, etc. It is not curable, and tends to be progressive with occasional remissions (see SCLEROSIS)

MYESTHENIA GRAVIS: A syndrome of fatigue and exhaustion of the muscular system marked by progressive paralysis of muscles without sensory disturbance or atrophy. It may affect any muscle of the body, but especially those of the face, lips, throat and neck

MYOCARDIAL: Pertaining to the muscular tissue of the heart

MYOCARDIUM: The middle and thickest layer of the heart wall, composed of cardiac muscle

OSTEOARTHRITIS: Chronic degenerative joint disease

OSTEOMALACIA: A condition marked by softening of the bones with pain, tenderness, muscular weakness, anorexia, loss of weight, resulting from deficiency of vitamin D, calcium and phosphorus

OSTEOPOROSIS: Abnormal rarefaction of bone due to failure of the normal process of bone making (see RAREFACTION)

PETIT MAL: See EPILEPSY

POLIOMYELITIS: A common acute viral disease characterised clinically by fever, sore throat, headache and vomiting, often with stiffness of neck and back. In a major illness can lead to paralysis. There may be subsequent atrophy of groups of muscles, ending in contraction and permanent deformity (see ATROPHY)

PULMONARY EMBOLISM: The closure of the pulmonary artery or one of its branches by an embolus, resulting in pulmonary edema or haemorrhagic infarction (see EMBOLISM, INFARCTION)

RAREFACTION: The condition of being or becoming less dense; diminution of density and weight, but not volume

REYNAUD'S DISEASE: A form of gangrene following local inflammation. Death of tissue, usually in considerable mass and generally associated with loss of vascular (nutritive) supply and followed by bacterial invasion and putrefaction

RETINITIS PIGMENTOSA: A disease (frequently hereditary) marked by progressive retinal sclerosis with pigmentation and atrophy. It is attended by contraction of the field of vision (tunnel vision). There are

star-shaped deposits of pigment in the retina and the retinal vessels become obliterated (see SCLEROSIS, ATROPHY)

RHEUMATOID ARTHRITIS: A chronic disease of the joints. In the late stages deformity and ankylosis develop

SCLEREDEMA: Edematous hardening of the skin (EDEMA: presence of abnormally large amounts of fluid in the intercellular tissue spaces of the body) SCLEROSIS: Hardening, especially of a part from inflammation. The term is used chiefly for such a hardening of the nervous system

SPASTIC: Hypertonic, so that the muscles are stiff and the movements awkward SPONDYLITIS: Inflammation of the vertebrae

SPONDYLOLISTHESIS: Forward displacement of one vertebrae over another

STROKE: A sudden and severe attack as of apoplexy or paralysis; PARALYTIC STROKE: a sudden attack of paralysis from injury to the brain or cord