

Commissioner's File: CSB/648/1987

Region: London North

**SUPPLEMENTARY BENEFITS ACT 1976**

**APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW**

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

**Name:** Mark Dear

**Social Security Appeal Tribunal:** Hertford

**Case No:** 002/13

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 14 April 1986 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 14 April 1986.

3. On 15 April 1985 the claimant became a boarder, living in private board and lodging accommodation. With effect from 25 November 1985 the Supplementary Benefit (Requirements) Regulations 1983 were amended by the Supplementary Benefit (Requirements and Resources) Miscellaneous Provisions (No. 2) Regulations 1985 (S.I. 1985/1835), and in the light of those amendments on 15 January 1986 the adjudication officer reviewed the claimant's award of supplementary benefit. He decided that, as from 25 November 1985, the claimant was entitled in toto to £64.70 a week, represented by £55 per week for his board and lodging and £9.70 for personal expenses. In due course, the claimant appealed to the tribunal, but in the event the latter upheld the adjudication officer.

4. An attempt was made to challenge the validity of the amendments contained in S.I. 1985/1835 but the Court of Appeal in the London Borough of Camden and Beverley Nelson v The Secretary of State for Social Services ruled that the amendments were not ultra vires. Needless to say, that decision is binding on me.

5. Regulation 9(4) of the Requirements Regulations (the entire supplementary benefit legislation has since been repealed) set out how the amount for board and lodging should be calculated, and it is not in dispute that, in accordance with its provisions, the claimant was in the present instance entitled to £55 by way of a basic charge together with an increase of £7.75 for five midday meals, making a total of £62.75. However, regulation 9(1)(a) stipulated that the amount determined under regulation 9(4) should not exceed the maximum amount prescribed in paragraph (6). It is not in dispute that the combined effect of regulation 9(6), Schedule 1A and the "LIMIT" appearing in the publication entitled "Supplementary Benefit Maximum Amounts, Initial Periods and Board and Lodging Areas" was to restrict the claimant's entitlement to £55. Accordingly, the claimant was entitled

only to £55 for his board and lodging, to which was added personal expenses of £9.70. It follows that, in upholding the adjudication officer, the tribunal did not err in point of law.

6. However, the claimant's representative has contended that under the transitional provisions contained in regulation 9(17)(f)(ii) of S.I. 1985/1835, which was effective from 25 November 1985, the claimant was entitled to "protection" for 13 weeks. Accordingly, he should receive a further £7.75 for that period as from 25 November 1985. However, that particular provision expressly stated that any transitional protection only arose "where, at the coming into operation of the Supplementary Benefit (Requirements and Resources) Miscellaneous Provisions (No. 2) Regulations 1985, there had not expired a period of thirteen weeks beginning with the date of the adjudication officer's first decision as to the claimant's entitlement to supplementary benefit following 29 April 1985". In the present instance, the transitional protection commenced from 14 May 1985, and had clearly expired long before the coming into operation on 25 November 1985 of the Supplementary Benefit (Requirements and Resources) Miscellaneous Provisions (No. 2) Regulations 1985. Such transitional protection had been conferred by regulation 9(17)(f)(ii) of the Requirement Regulations as they were before that subsequent amendment, and that particular provision had not been declared ultra vires by the Court of Appeal in the Cotton case. Accordingly, there was no question of the claimant's being entitled to transitional protection for a further 13 weeks as from 25 November 1985.

7. I am satisfied that the tribunal did not err in point of law, and have no hesitation in dismissing this appeal.

(Signed) D.G. Rice  
Commissioner

Date: 2 February 1989