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CSB/691/1984

RFMH/BC

Commissioner's File: CSB/691/1984

C A O File: 9214/84

Region: Midlands

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the supplementary benefit appeal tribunal (now social security appeal tribunal) dated 23 February 1984 is erroneous in point of law and is set aside. I direct that the matter be reheard by a differently constituted tribunal, in accordance with the directions in this decision.
2. The facts before the supplementary benefit officer (now adjudication officer) as set out on form LT 205 state that the claimant is married with 8 dependent children aged between 8 and 17 at the material time. On 3 November 1983 he claimed supplementary benefit and on 10 November 1983 he was interviewed at the office of the Department of Health and Social Security. He stated that he followed a special diet as he was a diabetic and that his wife also had to do so following an operation for a gall bladder. On 11 November 1983 the benefit officer decided that the claimant was not entitled to supplementary benefit from 3 November 1983 because his resources exceeded his requirements. Following his appeal to the tribunal the claimant was interviewed on 30 November 1983. He stated that neither he nor his wife were able to do the laundry due to ill health and that his two elder children were unable to help because of homework commitments. The claimant was asked to submit evidence of the alleged loan of £1,000.00, stated to have been borrowed to do repairs to his home, but in the event failed to do so.
3. The claimant submitted a letter from his doctor dated 19 November 1983 which stated that he suffered from diabetes and allergic skin conditions for which he was on a special diet. The doctor also stated that the claimant's wife suffered from asthma and cholecystitis and was on a special fat free diet. The claimant was unable to provide any evidence to show how his wife's diet involved extra cost.
4. In his written observations on the claimant's appeal to the tribunal the benefit officer submitted that on the facts of the case there was no entitlement to benefit as the claimant's requirements calculated in accordance with the relevant Acts and regulations were exceeded by his resources.

5. On 23 February 1984 the tribunal upheld the benefit officer's decision. The findings of the tribunal on questions of fact material to the decision read as follows:-

- "1. That the assessment on LT206 is correct.
2. That the chief requirement of the applicant's wife is within normal limits of food purchase.
3. That there were sufficient members of household who are 'adult' for the purpose of doing laundry and are capable of dealing with washing."

The reasons given for the tribunal's decision read as follows:-

"That upon the evidence heard the applicant had been correctly assessed and that he did not meet the requirements in respect of diet and laundry.

See Schedule 4 Requirements Regulations."

The claimant now appeals to the Commissioner on a point of law, leave having been granted by me on 6 July 1984.

6. Rule 7(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 (now regulation 19(2) of the Social Security (Adjudication) Regulations 1984) provided that every tribunal should record a statement of the reasons for their determination and of their findings on material questions of fact. It is, of course, fundamental principle that if a tribunal gives inadequate reasons for its decision, that is an error of law whether or not the actual decision is correct. In my judgment, the tribunal in this case did not fully comply with rule 7 in that the findings of fact and reasons for the decision are inadequate and give no indication that adequate consideration was given to the relevant regulations, and the parties concerned are left in the dark as to why and upon what basis the claimant's resources were calculated to be in excess of his requirements. I should put on record at this stage that the adjudication officer now concerned supports the appeal in so far as it is an appeal on the ground that the tribunal has not given adequate reasons for its decision. I must set aside the decision and I direct that the matter be reheard by a differently constituted tribunal in accordance with the guidelines set out in this decision.

7. Paragraph 2(1) and (2) of Schedule 1 to the Supplementary Benefits Act 1976 (as amended by the Social Security Act 1980) is as follows:-

"2.-(1) For the purposes of this Schedule requirements shall be of three categories, namely, normal requirements, additional requirements and housing requirements; and the items to which each category relates and,

(2) A person's requirements shall consist of normal requirements together with requirements, if any, of such of the other categories as are applicable in his case."

8. It is not contended that the claimant's normal requirements have been incorrectly assessed. In the grounds of appeal submitted by the claimant and the Child Poverty Action Group on his behalf, it is submitted that the tribunal erred in law because they failed to consider the additional requirements laid down in Part II of Schedule 4 to the Supplementary Benefit (Requirements Regulations) 1983 in particular whether additional requirements for special diet for the claimant's wife and laundry addition were applicable and whether the claimant satisfied the conditions of regulation 17. Commendably, the chairman took a detailed note of evidence and it is evident that the claimant's evidence covered these matters. It is the duty of a tribunal to consider all additional requirements which are prescribed in Schedule 4 which may be applicable in a particular case on the evidence before them and the tribunal erred in law in their failure to do so.

9. Whether or not the claimant's wife is entitled to an additional requirement because of a special diet at the material time falls to be considered under paragraph 14 of Part II to Schedule 4 to the Requirements Regulations which provides as follows:-

"14. Person who needs a special diet because he -

- (a) suffers from diabetes; a peptic, including stomach and duodenal, ulcer; a condition of the throat which causes serious difficulty in swallowing; ulcerative colitis; a form of tuberculosis for which he is being treated with drugs; or from some illness for which he requires a diet analogous to that required for the other illnesses specified in this sub-paragraph;
- (b) is convalescing from a major illness or operation or suffering from an illness not specified in sub-paragraph (a), and the diet involves extra cost;
- (c) is a dependant and is living in the same accommodation as a person suffering from a form of respiratory tuberculosis for which he is being treated with drugs;
- (d) suffers from renal failure for which he is treated by dialysis; or
- (e) suffers from a condition, other than one specified in sub-paragraph (a), for which he has to follow a diet which involves extra cost, substantially in excess of the amount specified in sub-paragraph (a) in column (2)."

10. It is submitted on behalf of the claimant that the tribunal erred in law on this point on the following ground (paragraph (1)(a) of the supplementary submission):-

"..The tribunal concluded that the dietary requirements of the appellant's wife are within the normal limits of food purchase. The tribunal do not appear to have addressed themselves to the question of whether those dietary requirements arose from a need to follow a diet of substantial cost because the appellant suffered from an illness not listed under (a). Moreover it is submitted that the tribunal did not consider whether the diet fell within the definition of special diet given by the Commissioners in CSB/517/1982; that the special nature of the diet lay in the addition to such intake in excess of what is normal. The tribunal it is submitted, consequently failed to examine the question of the cost of the diet and made no findings of fact on which a decision could have been reached."

I agree with this submission as correct in law. The tribunal failed to record adequately why they rejected the claimant's arguments on his wife's dietary needs and also failed to record whether they considered the relevant provisions of paragraph 14 of Part II to Schedule 4 to the Requirements Regulations. They failed to comply with rule 7(2)(b) of the Appeal Rules and their failure constituted an error of law.

11. Whether or not the claimant is entitled to an additional requirement for laundry expenses at the material time falls to be considered under paragraph 18 of Part II of Schedule 4 to the Requirements Regulations, which provides:-

"18. Where -

- (a) the laundry of the assessment unit cannot be done at home because all adult members of the household are ill, disabled or infirm or because there are no suitable washing or drying facilities; or
- (b) the quantity is substantially greater, for example because of incontinence, than the amount which would normally be generated by an assessment unit of the same composition."

12. Paragraph 18(a) above mentioned falls into two parts. The new tribunal should first consider whether "the laundry of the assessment unit cannot be done at home because all adult members of the household are ill, disabled or infirm". The words "adult members" are not defined but in my view the meaning should be given to a person other than a "child". Section 34 of the Supplementary Benefits Act 1976 defines "child" as a person under the age of 16 and in my view in the context of paragraph 18(a) it would not be unreasonable to expect a person aged 16 or over to be capable of undertaking laundry duties on behalf of the assessment unit. Secondly the tribunal should consider whether "there are no suitable washing or drying facilities" in the claimant's home. In my view sinks and baths provide suitable washing facilities and balconies suitable drying facilities. However, this is a question of fact for the tribunal in considering the circumstances of each particular case. The tribunal should consider both alternatives and record findings as to whether or not they consider either applicable to the claimant.

13. The tribunal should also consider whether paragraph 18(b) is applicable and record findings of fact in support of their conclusion. The question of what quantity is substantially greater than the amount which would normally be generated by an assessment unit of the same composition is a question of fact and the tribunal should enquire into the matter fully. The tribunal of 23 February 1984 failed to record adequate findings of fact as required under rule 7(2)(b) of the Appeals Rules and to give reasons for their decision and why they rejected the claimant's evidence on this particular aspect of his appeal. In my view the decision was erroneous in law on this ground.

14. In his ground of appeal to the Commissioner the claimant submits that "regard was given to the contents contained in the medical reports from Doctors re my diet, bath (twice a day) because of my skin conditions and other facts". It is not in dispute that the claimant was entitled to a dietary addition under paragraph 14 of Schedule 4 and it is conceded by the adjudication officer now concerned that the tribunal were alerted to the fact that the claimant needed a special allergy free diet because of an allergic skin condition and were therefore required to determine whether under regulation 13 and paragraph 14 of Schedule 4 the claimant could gain any further benefit. No doubt the new tribunal will enquire into the position and record findings of fact and reasons for their decision in support of their determination.

15. There was no evidence before the tribunal of 23 February 1984 that the claimant required baths twice a day. This is not an obvious necessity and I do not consider the tribunal erred in law in failing to deal with the matter. However the new tribunal that rehears this case will of course be conducting a complete rehearing and the claimant will be able to submit any further relevant evidence in support of his claim.

16. The tribunal of 23 February 1984 had before them evidence to the effect that the claimant had obtained loans for the purpose of repairs and decoration to his home. The chairman's note of evidence records that the claimant submitted that his home was in poor repair necessitating replastering with repairs to floorboards and to the roof. The new tribunal should consider whether the claimant is entitled to an additional requirement for the payment of interest on the loans under regulation 17 of the Requirements Regulations. They should record findings of fact as to whether the repairs and improvements carried out by the claimant fall within the definition of regulation 17(3) and give their reasons in support of their conclusion. The tribunal of 23 February 1984 failed to do so and in my view their decision was erroneous in law on this ground.

17. The Child Poverty Action Group requested an oral hearing of the appeal but after considering the record of the case and the reasons for request, I was satisfied that the appeal could properly be determined without a hearing. It will be for the new tribunal to consider all the relevant matters of fact de novo bearing in mind all I have said in my decision as to the legal provisions relating to the matters in issue.

18. The claimant's appeal is allowed.

(Signed) R F M Heggs
Commissioner

Date: 8 May 1985