

Pregnancy diet addn

JGM/LS

Commissioner's File: CSB/915/1985

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Region: North Western

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal: Rochdale

Case No: 15/33/11

1. My decision is that the decision of the social security appeal tribunal dated 7 March 1985 is not erroneous in point of law.

2. The appeal relates to a claim by the claimant for a dietary addition during her pregnancy and for a period immediately following childbirth. Dietary additions are to be found in sub-paragraphs (a) to (e) of paragraph 14 of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983. Sub-paragraph (a) relates to certain specified illnesses and conditions of the throat and other illnesses requiring an analogous diet. Sub-paragraph (b) relates to persons convalescing from a major illness. Sub-paragraph (c) relates to a limited class of persons being treated with drugs for a particular purpose. Sub-paragraph (d) relates to a person suffering from renal failure for which he is being treated by dialysis. Lastly sub-paragraph (e) relates to a person suffering from a condition other than one specified in sub-paragraph (a) for which he has to follow a diet involving extra cost substantially in excess of the amount allowed under sub-paragraph (a). At the time of the claimant's appeal this last mentioned amount was £3.60 per week. It should be added that regulation 13(2) precludes the award of a dietary addition under more than one sub-paragraph in respect of any one person.

3. The adjudication officer's first contention was that pregnancy without complications is not a condition from which a person suffers in terms of paragraph 14(e). And although there was some evidence of minor ailments related to pregnancy in this case the claimant's case was put broadly on the proposition that pregnancy was itself a condition covered by paragraph 14(e). The adjudication officer contended that pregnancy, though a condition, was not a condition from which one could be said to "suffer". Conditions to which paragraph 14(e) related had therefore he contended, to relate to conditions that could be described as "disorders". The tribunal accepted that pregnancy was a "condition" to which paragraph 14(e) related but disallowed the appeal on other grounds to which I shall come. As they were in my judgment correct in concluding that the appeal must fail on other grounds, their decision was correct. But I do not consider that

their conclusion that pregnancy was a condition to which paragraph 14(e) relates was correct. And I give my reasons for this opinion.

4. The word "suffer" can certainly bear the neutral meaning of "experience", which does not necessarily import anything adverse, although I think that the adverse connotation is the more usual one. But my reasons for preferring this latter connotation in the present context is based on the structure of paragraph 14. This contains five sub-paragraphs (a) to (e). I need not say anything about sub-paragraphs (b), (c) and (d). But sub-paragraphs (a) and (e) are crucial and I set out the material parts of them below, column (1) representing cases applicable and column (2) the weekly amount in force at the date to which the appeal relates:

(1)	(2)
"Person who needs a special diet because he -	£3.60
(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.	
(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).	The weekly cost of the diet except....."

5. It is clear that no dietary addition can be awarded under sub-paragraph (e) if the extra cost of the relevant diet does not substantially exceed £3.60; and that there is nothing in that sub-paragraph to authorise the payment of £3.60 or any other amount in such a case. This appears an anomalous conclusion; but the anomaly disappears if, in that case, £3.60 can be awarded under sub-paragraph (a). The anomaly will remain if there is to be a wide range of conditions to which sub-paragraph (e) relates that would not fall under sub-paragraph (a) if the extra cost fell to below, or not substantially in excess of, £3.60. For this reason I consider that the word "suffers from" in sub-paragraph (e) connotes something narrower than "experiences" and imports as is more natural, that the thing suffered is adverse, as with an illness or deformity. This keeps the two sub-paragraphs roughly in line. In my judgment a woman with a normal pregnancy does not suffer from the condition of pregnancy in terms of sub-paragraph (e). The tribunal were in my judgment wrong in so far as they concluded otherwise. But this conclusion was not in fact necessary for their decision because they held, on other ground, that the dietary addition was not payable. And the decision itself was not erroneous in point of law if the other ground was itself correct, as I find it to have been.

6. I must turn therefore to the ground of refusal. It was submitted that the claimant needed while pregnant a special diet recommended for pregnant women by the district dietician of the claimant's local health authority. There was some argument about the amount of the extra cost but the tribunal found that it did involve extra cost substantially in excess of the £3.60. But they found that it was not a "special" diet which the claimant in terms of paragraph 14 of the Schedule "needed". They found that the diet in question was a good healthy diet for all members of the population, which was unconnected with the condition of pregnancy; and that it was advisory and not prescriptive. I cannot see that they erred in law in reaching these conclusions. Health magazines and indeed the popular press are full of advice about what one should eat. Not all the advice is consistent. The diets recommended by such sources are not special diets which a person can be said to need in the sense of paragraph 14. I do not consider that a diet put forward even by a dietician as being suitable for persons or classes of persons generally (as opposed to one prescribed by a qualified doctor or dietician to meet the needs of a particular individual) can properly be held to be a special diet of the kind contemplated by that paragraph.

8. The claimant's appeal fails.

(Signed): J G Monroe  
Commissioner

Date: 29 April 1986