

Diet - ~~fact that~~ items that required refrigeration were not "major items" - nothing in regulation allowing a single payment for fridge that required the items to be "major items".

RAS/SH/1/LS

Commissioner's File: CSB/0009/1986

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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: Warrington

Case No:

1. My decision is that the decision of the social security appeal tribunal dated 10 September 1985 is erroneous in point of law. I set it aside and direct that the case be reheard by a differently constituted tribunal.
2. The claimant lives with his wife and two young children. He is or at least was at the relevant time, on supplementary benefit. His wife is a diabetic and has, in ways that I will come to, to be careful about her diet. The claimant requested a single payment for a refrigerator because some at least of his wife's food needed to be kept at refrigerated temperatures. His request was turned down by an adjudication officer on the grounds that the conditions relating to single payments in respect of essential furniture and household equipment, in regulations 9 and 10 of the Supplementary Benefit (Single Payments) Regulations 1981, were not satisfied and that the claimant did not qualify for a so-called discretionary payment under regulation 30 of those Regulations. The claimant appealed. The tribunal upheld the adjudication officer's decision. The tribunal's findings of fact were -

- "1. The tribunal found as fact paragraphs 1-3 of Form AT2.
2. The diet which [the claimant's wife] follows is one consisting of fresh foods - no processed foods are to form part of the diet - the diet is a restricted carbo-hydrate diet. Sugar free.
3. Jams or cordials had to be of a nature for the diet and the containers [carry] a warning that the items must be kept in a refrigerated or cool place.
4. There is no larder or pantry in the appellant's home and the only place to keep foodstuffs was in a small kitchen, where cooking would be going on. It was not a cool kitchen.
5. There were some shops within walking distance of the appellant's home but his main shopping centre was a ten minute bus ride away. [The claimant] is in good health."

They gave as reasons for their decision:-

"The tribunal decided that although the Appellant did not possess the item in question, it was not an item of essential furniture or household equipment as required by

Reg 10(2) of the Single Payments Regulations 1981 and defined by Reg 9(k) of those same regulations. The tribunal accepted that some items of the diet were to be kept at a refrigerated temperature or in a cool place; but the major items were those normally eaten by persons generally (namely fresh foods - vegetables and meat) and having regard to Commissioner's Decision 16/83 the tribunal concluded that the criteria of Reg 9(k) of the Regulations had not been satisfied.

Under Reg 30 the tribunal decided that provision of the item in question was not the only means by which serious damage or serious risk to health or safety might be avoided because [the claimant] being in good health was able to make regular visits to nearby shops and his main shopping centre to ensure that the dietary foods were obtained frequently."

In his appeal the claimant says -

- "1. The grounds for the appeal are that the tribunal made an error of law by introducing a restriction to entitlement not present in the Supplementary Benefit Regulations.
  2. The tribunal found as a question of fact that the claimant's wife followed a diet for which some items must be kept in a refrigerated or cool place. They also found that the kitchen itself was not cool.
  3. The items of the diet which need refrigeration are special diabetic jams and cordials and are not foodstuffs found in a normal diet.
  4. The tribunal refused a single payment for a refrigerator, their reason being that the items that required refrigeration were not major items in the diet. It is submitted that this is an irrelevant consideration and the tribunal made an error of law in introducing it."
3. It is not in issue that the claimant is not entitled to a payment for the refrigerator under regulation 30. What is in issue is whether the claimant's wife "requires, for medical reasons, a special diet for which it is necessary to keep foodstuffs at refrigerated temperatures." She does suffer from diabetes. It is not in dispute that she is on a restricted carbohydrate diet and has to eat non-processed sugar free foods. The foods which, are in issue are her sugar free jams and cordials which undoubtedly need to be kept cool. This means that they need to be refrigerated because nowhere in the home is cool enough. What the adjudication officer now concerned says is that:-

"That the claimant's wife chose to partake of certain "diabetic" jams and cordials, which I accept as requiring cool or refrigerated storage, is, in my submission, purely a matter of personal dietary choice. Such foodstuffs are not prescribed by the terms of the diet recommended for the claimant's wife. It is therefore my submission that the diet does not necessitate the keeping of special jams etc at refrigerated temperatures and, accordingly, that the conditions of regulation 9(k) are not satisfied. I submit that the tribunal did not therefore err in their conclusion."

For my part I have no doubt that the claimant's wife's diet is a special diet within the meaning of regulation 9(k). I do not accept the adjudication officer's submission, if I have understood it correctly, that, because her diet contains only foodstuffs which people who do not require a special diet for medical reasons might want to eat, it is not capable of being special. Many perfectly healthy people might want to avoid sugar. That does not in my view mean that a sugar-free diet cannot be a special diet and I do not think there is anything in R(SB)16/83 which is inconsistent with that. What the adjudication officer seems to suggest is that the claimant's wife should go without the sugar free jams and cordials which need refrigeration. For my part, though it is a matter of fact for a tribunal, I do not

see why she should. It is not as if the choice of those foodstuffs is particularly self-indulgent. Diabetic jams and cordials are made for a special purpose and I would take the view that diabetics can be said to require them for medical reasons. Those of course are, as I have indicated, matters for a tribunal. I must deal with the point of law and I agree with the submission made on behalf of the claimant that the tribunal was wrong to rule out a single payment under regulation 9(k) because the foodstuffs in question were not what they called "major items". That introduces a restriction which is not in the regulation. The "foodstuffs" referred to in regulation 9(k) cannot mean all the foodstuffs in the diet. So long as some require refrigeration that is sufficient, provided of course that they are required for medical reasons. The tribunal was wrong in law in imposing the restriction mentioned and the claimant's appeal succeeds. The new tribunal will in coming to their decision have regard to the principles expressed above and find facts relevant to those principles.

(Signed) R A Sanders  
Commissioner

Date: 18 September 1986