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SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the social security appeal tribunal dated 18 July 1989 is erroneous in law. I set it aside and direct that the case be reheard by a differently constituted tribunal.

2. The question for the tribunal was whether the adjudication officer had rightly disallowed the claim for a payment under regulations 27 or 30 of the Supplementary Benefit (Single Payments) Regulations 1981 to enable the claimant to purchase various items of clothing. The tribunal allowed a payment in respect of one of the items but not the others.

3. The current adjudication officer supports this appeal. His submissions include the following -

"4. The tribunal's findings of fact are recorded as:

"The facts contained in Paragraphs 1-6 of the Summary of Facts contained in AT2 were accepted by the Tribunal."

Faced with a claim for clothing the tribunal were required, I submit, to make full findings of fact in terms of what the claimant actually required in relation to the stock of clothing he already held at the date of claim. Only then, I submit, would the tribunal be in a position to decide whether there was a need for clothing in terms of regulation 3(2) of the Single Payments Regulations. In the event that the claimant could satisfy the provisions of regulation 3(2), the tribunal would be required, based on their finding of fact under this regulation as to how the need arose, to make findings under regulation 27.

5. The claimant's evidence was that, due to his kidney disease and incontinence, his clothes needed repeated laundering. In addition, the dressing gown, cardigan and overcoat were required because the cold affected his condition. The claimant produced 2 doctors letters to

support his claim. Only one of the letters however, was contained in the papers before the tribunal (at page T10).

6. I submit that it was incumbent on the tribunal to have investigated the contents of the second letter. By failing to show that they have fully considered the claimant's evidence it is my submission that the tribunal have erred in law.

7. It is, I submit, obligatory upon the tribunal to show the reasons for their determination and their findings on material questions of fact (compare paragraph 14 of Commissioner's decision R(SB) 6/81). In addition, in Commissioners's decision R(SB) 11/82 (paragraph 14) it was confirmed that a failure to set out adequately the reasons for a decision was itself an error of law. It was also held that a claimant, looking at the decision, should at least be able to discern on the face of it, the reasons why the evidence submitted had failed to satisfy the authority. It is my submission that the instant decision leaves the claimant in the dark as to why his evidence was not accepted. In doing so, I submit, the tribunal has failed to comply with regulation 25(2)(b) of the Adjudication Regulations and thus erred in point of law.

8. I therefore support the claimant's appeal and respectfully submit that in view of the need for further investigation and findings of fact it should be remitted to a differently constituted tribunal to be heard afresh. For completeness, I submit that the doctor's letter referred to in paragraph 6 above and the department's letter dated 15 3 89 (referred to in the claimant's grounds of appeal to the Commissioner at page 41) should be before the new tribunal. I finally submit that the claimant's request for an additional requirement for clothing should be referred back to the adjudication officer for decision."

I agree with those submissions. The tribunal's decision is erroneous in law in the respects referred to and I accordingly allow this appeal. As I said in relation to the claimant's other case the missing documents should be produced to the new tribunal.

(Signed) R A Sanders
Commissioner

Date: 3 February 1992