

JGM/BC

Commissioner's File: CSB/0397/1986

C A O File: AO 2481/86

Region: London South

SUPPLEMENTARY BENEFITS ACT 1976

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

Name: Molly Puddephatt (Mrs) appointee for May Beatrice Cook (Mrs)

Social Security Appeal Tribunal: Sutton

Case No: 05/06

1. My decision is that the decision of the social security appeal tribunal dated 8 January 1986 was erroneous in point of law and it is set aside. The matter must be referred to another tribunal.
2. The claimant is a woman aged well over 80 who suffered a severe stroke in September 1984 well after she attained pensionable age. She is a patient residing in a nursing home registered under Part II of the Registered Homes Act 1984 and as such is classified as a boarder in terms of the Supplementary Benefit (Requirements) Regulations 1983 (the Requirements Regulations). These regulations have been the subject of repeated amendments relevant to the present issue, having been amended in particular in December 1984, April and November 1985 and July 1986. Basically a boarder is entitled to have included in his or her requirements the entire cost of his or her board and lodging. But this has been made subject to some limitation by reference to some standard of what may be called "reasonableness". Originally this was covered by regulation 9(6) of the Requirement Regulations. But, probably because this involved the assembly of information about charges prevailing locally and thereby created administrative problems, successive attempts have been made to lay down what may be called rule-of-thumb limitations. The amending regulations above referred to were all directed to achieving this. But the validity of each of the first three sets of regulations has been challenged. As things stand the 1984 amendment has been held to have been invalid but the amendments of April and November 1985 have been held to have been valid. But appeals to the Court of Appeal are pending on all these points and it is at present impossible to say with certainty which of the amendments are good and which are not, or whether if the amendments are invalid the pre-amendment provisions will still stand or not.
3. Subject to what is said in paragraph 16 below the present appeal covers a period beginning 29 April 1985 the commencement date of the amendments of April 1985, and the tribunal decision now appealed from was given after the coming into force date of the November 1985 regulations. I am conscious also that subsequent decisions of the Courts or of some Tribunal of Commissioners may show that the guidance given in this decision is ill-founded and may thus have been displaced by higher authority by the time that the new tribunal comes to consider this case.

8. Paragraph 2 of Schedule 1A provided as follows:

Nursing homes

2.-(1) Subject to paragraphs 3 and 5, where the accommodation provided for the claimant is a nursing home for persons in need of personal care by virtue of -

- (a) past or present mental disorder but excluding mental handicap, the appropriate amount shall be £148.60 per week; or
- (b) mental handicap, the appropriate amount shall be £168.60 per week; or
- (c) past or present drug or alcohol dependence, the appropriate amount shall be £148.60 per week; or
- (d) physical disablement, the appropriate amount, in the case of persons to whom sub-paragraph (2) below applies, shall be £198.60 per week or, in any other case, shall be £138.60 per week; or
- (e) terminal illness, the appropriate amount shall be £198.60 per week; or
- (f) any other condition not falling within sub-paragraphs (a) to (e) above, the appropriate amount shall be £138.60 per week.

(2) For the purposes of (d) above, this sub-paragraph applies to persons under pensionable age, or persons over pensionable age who before attaining pensionable age had become physically disabled.

A new Schedule 1A was substituted in November 1985 by the Supplementary Benefit (Requirements and Resources) Miscellaneous Provisions (No 2) Regulations 1985 increasing the maximum amounts. However, for convenience I will refer to the earlier version of Schedule 1A.

9. It is clear that the first enquiry is whether the accommodation provided for the claimant is a residential care home for persons in need of personal care by virtue of any one or more and if so which of the conditions listed in sub-paragraphs (a) to (f). The tribunal instead of asking this question asked themselves only what was or were the condition or conditions by virtue of which the claimant needed such personal care and concluded that it was stroke-induced terminal illness. This latter question can arise under paragraph 1(2) but only after the first question has been answered. The tribunal thus misdirected themselves. I may add that under paragraph 3 (set out in paragraph 14 below) a third question can arise, viz. what is personal care that the claimant is in fact receiving?

10. How should the various questions be answered? I take the first question which may be paraphrased as "what category or categories of persons is the home a home for?" The natural answer to this question is "the categories of persons for whom in fact it holds itself out as providing personal care". In view of the fact that the Registered Homes Act 1984 in section 29(2) authorises the imposition of conditions for registration of nursing homes and in section 29(4) makes it an offence to fail to comply with any such condition, the natural answer above ought to be qualified by the adding at the end the phrase "without failure to comply with any condition of registration". The claimant is over 80 and has sustained a

13. This is the first question that the tribunal must decide. If it emerges that there is more than one category it will almost certainly be necessary to consider paragraph 3 of the Schedule in order to determine which is the relevant category of patient. This paragraph, which applies equally to residential homes and nursing homes, uses the phrase "registered for"; and one might expect that it would be for the registering authority to decide what a home is registered for. But in fact, as was pointed out in the Commissioner's decision on file CSB/1422/1985 at paragraph 9, the Registered Homes Act 1984 does not provide for registering homes for any particular category of patient, it merely refers to registering them. The nearest that it comes to the concept of registering for a purpose is the power to impose conditions, which makes it possible to say that a home is not registered for a purpose where there is a condition that it shall not be used for that purpose. Part I of the Act which relate to residential care homes, and the Residential Homes Regulations provide for categorising residents rather than homes, and seems to me clearly to contemplate that homes may cater for more than one class of resident. Part II, which relates to nursing homes, and the Nursing Homes Regulations provide for categorising homes but not into the categories mentioned in paragraph 2 of Schedule 1A. And in my judgment the purpose for which a home is registered can be ascertained only by reference to the conditions imposed. If a home is registered under the Act without any restriction as to the categories of residents then it is registered for all categories. I must add that this does not seem to have been the view of the author of the decision above mentioned on file CSB/1422/1985. Furthermore it has no relevance to the construction of paragraph 1 of Schedule 1A, which is concerned only with "homes for" a particular category or categories of resident. That in my judgment is a question of fact to be answered in the light of the considerations mentioned in paragraph 12 above.

14. If the new tribunal conclude that the home in question in this case is a home for one category of residents only (and they might do this even if they concluded that the home was a home for persons in need of care by reason of old age who, incidentally only, were also in need of such care by virtue of some other condition) then they will have no difficulty in applying paragraph 2. But if, as seems perhaps more likely, they conclude that it is a home for more than one category of resident/patient the tribunal will have to go on to consider paragraph 3 of Schedule 1A which provides as follows:

"3-(1) Where the accommodation provided for the claimant is -

- (a) both a residential care home and a nursing home, or
- (b) a residential care home or a nursing home

being a home for, or a home registered under the Registered Homes Act 1984 for, persons in need of personal care by virtue of any two or more of the physical or mental conditions referred to in paragraphs 1 or 2, the appropriate amount shall be set out in the following sub-paragraphs of this paragraph.

- (2) Where the home is so registered and where the personal care that the claimant is receiving in that accommodation corresponds to a category of personal care for which that accommodation is so registered, the appropriate amount shall be that amount, subject to paragraph 5, in paragraphs 1 or 2, as the case may be, as is consistent with that personal care.

regulation 11(4A)(c) of the Supplementary Benefit (Resources) Regulations 1981 only if she was in receipt of a supplementary pension or allowance before 29 April 1985. The new tribunal should therefore consider whether there were here special circumstances in terms of the closing words of regulation 7(2) of the DQ Regulations that would make it appropriate to fix a different day as the commencement of the relevant benefit week. They may refer to Decision CSB/27/1986 on this question.

17. I allow the appeal and remit the matter to another tribunal who should determine the matter in the light of the guidance given above or in any relevant further decision especially of higher authority to which their attention is drawn.

(Signed) J G Monroe
Commissioner

Date: 30 January 1987