

Set aside Appeal of Commissioner's Decision

MH/1/LM

Commissioner's File: CS/116/92

SOCIAL SECURITY ACTS 1975 TO 1990
SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR STATUTORY SICK PAY

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Dympna Mathan (Mrs)

Appeal Tribunal: Manchester

Case No: 614:25143

1. I set aside the decision I purported to make in this case dated 20 July 1993, on the ground that there was an evident error in the decision. The explanation would appear to be that it was assumed, incorrectly, that this case was one of a large group of cases dealing with questions in relation to invalidity benefit which have been treated under the name of the leading case, which is now before the European Court, of Graham. The error was brought to my attention by a letter dated 11 August 1993 from the Office of the Solicitor, Department of Social Security. The letter sets out in some detail the arguments which it is submitted justify my setting aside the decision of 20 July 1993, and I accept them with the result that the decision is set aside.
2. The further question which then arises is whether the case should be considered in detail further. By letter dated 23 September 1993, the Office of the Solicitor raised the point that the outcome of the case must be entirely academic to the claimant because, in the light of the events which have happened in relation to her employer taking on the full liability in respect of the claimant, the claimant has nothing to win, or indeed, to lose whatever the outcome of the case. The Chief Adjudication Officer suggests that it would be right to wait a case where there is a real issue between the parties on those difficult issues which still arise in the present case to be explored.
3. The claimant is represented by Mr Rathfelder a welfare rights officer of Manchester Council, who set out his position in a letter dated 6 September 1993. He submitted that the question relating to statutory sick pay was not academic to the employer, but this point has already been dealt with in correspondence between the Commissioner's Office and the representative. He further goes on to suggest that a change of staff or change in the financial circumstances of the employer, the local authority, might lead to a less fortunate result from the claimant's point of view on a subsequent occasion should she fall ill again. Unfortunately for this argument, this appeal is not concerned with such an event. It must be academic for the

present appeal as to whether or not a situation could arise in the future where some adverse consequence might affect the claimant's position. Since, as stated above, I accept the submission by the Chief Adjudication Officer that the function of the Commissioner is to try real matters of dispute, and not decide academic questions, which have no consequence in fact for the claimant, I cannot regard the arguments put forward on the part of the claimant to be conclusive for my decision. Accordingly I accept the submissions made on behalf of the Chief Adjudication Officer. The consequence will be that this appeal will be dismissed.

(Signed) M Heald
Commissioner

Date: 13 April 1994