

RAS/1/LM

Commissioner's File: CIS/208/90

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Paul F Jackson

Social Security Appeal Tribunal: Bolton

Case No: 612 09328

[ORAL HEARING]

For the reasons I gave in CIS/180/89 and CIS/372/90 (copies of those decisions being annexed) the claimant is entitled to a severe disability premium pursuant to paragraph 13 of Schedule 2 to the Income Support (General) Regulations 1987 as from the date when he satisfied the condition imposed by sub-paragraph (2)(a)(i) of that provision.

**(Signed) R A Sanders
Commissioner**

Date: 5 December 1990

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DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. The claimant is a seriously disabled single man who lives with his parents. He is in receipt of an attendance allowance and a severe disablement allowance. He is also in receipt of income support and his "weekly applicable amount" in accordance with regulation 17 of the Income Support (General) Regulations 1987 includes an amount payable by way of disability premium pursuant to paragraph 11 of Schedule 2 to those Regulations. He does not however get the severe disability premium, pursuant to paragraph 13 of the Schedule, which is payable at a higher rate. That is because an adjudication officer decided that the claimant did not satisfy the conditions imposed by sub-paragraphs (2)(a)(ii) and (iii) of paragraph 13. A social security appeal tribunal confirmed that decision. I held an oral hearing of the claimant's appeal against the tribunal's decision. The case was dealt with (with two others, (CIS/207/90 and CIS/208/90)) immediately following the hearing in CIS/372/90 and in my decision in that case I have held sub-paragraphs (2)(a)(ii) and (iii) to be ultra vires with the consequence of course that the conditions imposed by those provisions are not required to be satisfied. That applies equally to this present case and this claimant is accordingly entitled to a severe disability premium from the date when he satisfied the conditions, apart from those imposed by the two provisions I have held to be invalid. There is however a point in this case and in the two others referred to above that did not arise in CIS/372/90. In that case, as I have said in the decision relating to it, it was accepted that if the ultra vires submission failed then on no view of the meaning of sub-paragraphs (2)(a)(ii) and (iii) could the claimant satisfy the conditions imposed by those provisions. In the present case (as in the other two) it was contended that, if the ultra vires submission failed, the claimant nevertheless did satisfy the conditions in question and was entitled to the premium. That was the submission made by Mr M. Rowland of Counsel who appeared for the claimant. Mr T. Prosser of Counsel who appeared for the

adjudication officer did not agree. Notwithstanding that the claimant in this case succeeds because I have held the provisions in question to be ultra vires I propose to deal, briefly, with the construction point.

2. It is appropriate that my decision in this case should be read together with my decision in CIS/372/90. In that decision I set out all the relevant statutory provisions including paragraph 13 of Schedule 2 and regulation 3 (both in its amended and unamended form) of the 1987 Regulations which contains the crucial definition of "non-dependant". I also referred to the fact that in CIS/180/1989 I had dealt with the meaning of regulation 3(2)(c) as it stood before the amendment which took effect from 9 October 1989 and which had added all the words in the provision after "the claimant's dwelling" so that the provision as amended reads -

"3(2)(c) a person who jointly occupies the claimant's dwelling and either is a co-owner of that dwelling with the claimant or his partner (whether or not there are other co-owners) or is liable with the claimant or his partner to make payments in respect of his occupation of the dwelling;"

And what Mr Rowland submitted was that the claimant and his parents with whom the claimant lived were together "liable to make payments in respect of [the] occupation of the dwelling". On that footing, it was not in issue that the consequence was that the claimant was entitled to a severe disability premium because he then satisfied sub-paragraph 13(2)(a)(ii) of the Schedule, having all along satisfied the other two sub-paragraphs.

3. I have dealt with the various complexities of paragraph 13 and regulation 3 in my decision in CIS/180/1989 and I do not need to repeat here the general matters to which I referred in that decision. I propose to deal only with the words added by amendment to regulation 3(2)(c). It was Mr Rowland's submission that the claimant's parents or at least one of them and the claimant were together "liable ... to make payments" because the claimant, being a person who occupied the home with his parents, was liable to make payments in respect of general rates (at least until they were abolished), water rates and for the consumption of gas and electricity. The first thing that might be said about that is that the "liability to make payments" must be in "respect of his occupation of the dwelling" (my emphasis). And "his" presumably refers back to "the person who jointly occupies the claimant's dwelling". Nevertheless it seems to be the case that if the condition is to be satisfied the claimant and the other person must both be liable to make qualifying payments that is to say payments which are "in respect of" the occupation of the dwelling. If that is so, I would rule out payments for gas and electricity because, whether or not the liability for such payments arises by statute or by contract - and that was the subject of much discussion - it seems to me that, even if the

claimant was liable with his parents to the gas and electricity boards, the liability to make such payments was not "in respect of" the occupation of the dwelling but in respect of the supply of the services in question.

4. The position with regard to rates and water rates seems to me to be extremely complicated. I think I do not need to be concerned with water rates because Mr Rowland conceded that his strongest case was in relation to general rates where liability falls on "the occupier" pursuant to section 16 of the General Rate Act 1967. And, in relation to general rates and the difficulty of determining who is the occupier for rating purposes, I need only refer to Routhan v Arun District Council [1982] 1 Q.B. 502. In that case the Court of Appeal had to decide whether a divorced wife who remained in occupation of the former matrimonial home was liable for the rates. It was the view of the Court that a husband and wife could, at least where they jointly owned the home, be joint occupiers for rating purposes but there was doubt, and disagreement, as to whether a wife who had no legal or equitable interest in the home could be said to be an occupier for rating purposes. I take the view that it could not have been intended that, in the context of income support and the calculation of the applicable amount, the law of rating (now in the past) should have to be clarified. I simply cannot believe that it could ever have been intended that, whatever the added words mean, entitlement was to depend on resolving the difficult and vexed question of exactly who is liable as an occupier for general rates. In CIS/180/89 I commented on what seemed to me to be the very unfortunate drafting of regulation 3(2)(c) as it then stood. In its amended version it seems to me to be even worse. I am not sure that the words added by the amendment are actually capable of producing any result. But I have to give them some meaning and the best I can do is to say that the effect of the amending words is that the claimant does not satisfy the condition in question unless the other person and the claimant are jointly liable to make payments as co-owners or co-tenants or perhaps co-licensees. If that is what was intended I do not know why the amending words were not in such terms. If something else was intended I have no idea what it was. Mr Prosser had no suggestions.

4. The outcome is that the claimant's appeal succeeds because of the ultra vires point. But, if I am wrong about that, the claimant would not satisfy the condition imposed by sub-paragraph 13(2)(a)(ii) of Schedule 2 to the 1987 Regulations and accordingly the appeal would fail. In the event the

claimant is entitled to the severe disability premium as from the date when he satisfied the conditions other than that imposed by sub-paragraph 13(2)(a)(ii).

(Signed) R A Sanders
Commissioner

Date: 5 December 1990