

Conditions of Entitlement - reg 6(c)(e) & (u) of
the CoE Regs - SAT shld consider all the paras that the
facts suggest -
RFMH/7/LS/MD

Commissioner's File: CSB/614/1985

C A O File: AO 2607/SB/85

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: John Edward Lewis

Social Security Appeal Tribunal: Manchester

Case No: 108/14

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1. My decision is the decision of the social security appeal tribunal dated 8 November 1984 is erroneous in point of law and accordingly I set it aside. I direct that the matter be reheard by a differently constituted tribunal in accordance with the directions in this decision.
2. This is the claimant's appeal on a point of law against the decision of the social security appeal tribunal dated 8 November 1984, leave having been granted by me. At the oral hearing held before me the claimant attended and the adjudication officer was represented by Mrs G. Huka of the Solicitor's Office of the Department of Health and Social Security.
3. At the time of his appeal, the claimant was aged 50 and single. He lived alone in a local authority centrally heated flat, comprising four main rooms. He was in receipt of a supplementary allowance at the "short term" lower rate with a heating addition at the lower rate. The claimant last worked as a cleaner in 1980. As there was no medical evidence to suggest that he was unfit for work, he was required to be available for employment as a condition of receiving supplementary allowance.
4. On 11 May 1984 he requested a review of the adjudication officer's decision in respect of the rates of the supplementary allowance and heating addition and that he should remain subject to the condition that he was available for employment. Under regulation 7 of the (Supplementary Benefit (Requirements) Regulations 1983 ("the Requirements Regulations") a claimant who has been entitled to benefit without being required to be available for employment for over a year qualifies for benefit at the long term (higher) rate). The adjudication officer refused to review his earlier decision. Thereupon the claimant appealed to the tribunal.
5. In his written observations on the claimant's appeal the adjudication officer submitted that the claimant was required to be available for employment in accordance with section 5(1) of the Supplementary Benefits Act 1976 ("the Act") because he was unable to satisfy any of the conditions contained in regulation 6 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981, as amended, ("the Conditions of Entitlement Regulations"), with particular reference to paragraph (c)(ii).

6. At the tribunal hearing of the appeal on 8 November 1984, the claimant submitted a letter dated 14 August 1984 from his own doctor outlining various symptoms from which the claimant suffered. The tribunal noted that the claimant's certificate of disablement expired on 21 November 1983 and that he had been advised to apply for a current certificate. In the event they concluded that the medical evidence did not support a finding that the claimant was incapable of work by reason of some disease or bodily or mental disablement and that he was unable to invoke regulation 6 of the Conditions of Entitlement Regulations. Consequently they dismissed the appeal.

7. Regulation 19(2) of the Social Security (Adjudication) Regulations 1984 provides that every tribunal chairman shall record a statement of the reasons for the tribunal's determination and of their findings on material questions of fact. In the present case for the reasons stated below, the tribunal chairman failed to comply with the statutory requirements. As a result the decision is erroneous in law and I have no alternative but to set it aside. I should put on record that Mrs Huka reported the appeal on this ground.

8. Section 5(1)(a) of the Act provides that the right of any person to a supplementary allowance is subject to the condition that he is available for employment, except in prescribed cases. Regulation 6 of the Conditions of Entitlement Regulations, made pursuant to Section 5(1) of the Act lists the cases in which a person is not required to be available for employment as a condition of title to a supplementary allowance. There are (including interpolations by amendment) well over twenty exceptions from the requirements contained in paragraph (a) to (u) of the regulations. I do not think it necessary to set out every paragraph, but only those to which I refer in this decision. Regulation 6 (as amended) so far as material provides as follows:

"(a) - (b) ...

(c) he is a person -

(i) ... or

(ii) who, by reason of some disease or bodily or mental disablement, is incapable of work, or

(iii) ...

(d) ...

(e) by reason of physical or mental disablement he has no further prospect of employment and in the 12 months immediately preceding has -

(i) on average worked for less than 4 hours a week,

(ii) been available for employment under section 5 for not less than 39 weeks,

(iii) made reasonable efforts to find employment and not refused any suitable employment;

(f) - (t) ...

(u) the preceding paragraphs do not apply to him, but the circumstances are analogous to any circumstances mentioned in one or more of those paragraphs and in the opinion of the benefit officer it would be unreasonable to require him to be available for employment."

9. The paragraphs in regulation 6 are alternatives and the claimant need bring himself within any one. But a tribunal can in my judgment properly reject a claim based on regulation 6 if it disposes of all paragraphs which the parties put forward and without considering the possibility of founding a claim upon other paragraphs, unless the facts presented to them are such as ought to suggest the possibility that some of the paragraphs should be considered. In the present case it appears that paragraph (c)(ii) was put forward as the relevant paragraph for consideration by the tribunal, and although the tribunal did not specifically refer to it in their decision, they did so by implication. Mrs Huka submitted, rightly in my view, that paragraph (e) was also relevant. The tribunal erred in law in confining their considerations only to the question of whether the claimant was incapable of work by reason of some specific disease or bodily or mental disablement 'in terms of paragraph (c)(ii)'. Having decided that he was not so incapable, the facts were such that it was incumbent upon them to consider the possibility of founding the claim on paragraph (e). As stated the decision must be set aside and I refer the matter for rehearing to a differently constituted tribunal.

10. The claimant told me that he had ceased work in October 1980 because of ill health, which steadily deteriorated since that date. He suffered from chronic bronchitis and other ailments and had had several periods of in patient treatment in hospital. He was unaware of his entitlement to sickness and invalidity benefit so that he continued to register for employment from that date. The claimant should submit in evidence to the tribunal that rehears this case, medical evidence in support of his allegations either from his own doctor or from the consultant at the hospital he attends. Such evidence should give a detailed diagnosis of the claimant's condition; whether he is considered to be incapable of some or all forms of work by reason of that condition, and if so, as from what date, and specific dates when the claimant received in-patient treatment in hospital. The new tribunal should consider this evidence and determine whether, and from what date, the claimant satisfies the conditions of regulation 6(c)(ii) giving the words "physical and mental disablement" the same interpretation as for the purposes of section 17(1)(a) of the Social Security Act 1975 which is couched in similar terms.

11. If the new tribunal determine that the claimant is unable to satisfy the conditions of regulation 6(c)(ii) or could not do so for 52 weeks so as to satisfy regulation 7(2)(b) of the Requirements Regulations they should then proceed to consider paragraph 6(e). It should be noted that "no further prospect of employment" must be "by reasons of physical or mental disablement". However in my view the words "no further prospect of employment" should be read to mean "no reasonable prospect of employment in the foreseeable future". If the tribunal accept that the claimant satisfies the condition they should consider whether he satisfied sub-paragraphs (i), (ii) and (iii) in the twelve months immediately preceding the period in issue. In his grounds of appeal to the Commissioner the claimant submitted several letters from potential employers showing that he had made reasonable efforts to find employment. These should be submitted to the new tribunal. If the new tribunal consider that the claimant is unable to satisfy the conditions of regulation (e) they should as a last resort consider paragraph (u) and should refer to a Tribunal of Commissioners decision (Commissioner's file No. CSSB/189/85) for guidance on its interpretation.

12. I next come to the issue of the rate of heating addition payable to the claimant. It is not in dispute that he was entitled to, and received, heating addition at the lower rate by virtue of paragraph 3(a) of part 1 of Schedule 4 to the Requirements Regulations. What is in dispute is whether the claimant is entitled to heating at the higher rate because he can satisfy the conditions contained in one of the paragraphs of part 1 of Schedule 4 to the Requirements Regulations. Paragraphs 1-8 provide the circumstances in which additional requirements for heating are appropriate and the rates thereof. As the claimant submits that he is entitled to an additional requirement for heating because of his health, paragraph 1 of the said Schedule 4 is appropriate. The new tribunal should consider with care sub-paragraphs (1), (2) and (3) and determine on the evidence before them if the claimant satisfies any of the conditions. The tribunal should bear in mind the effect of regulation 12(2)(f) of the Requirements Regulations which provides, so far as relevant to the

present appeal, "an amount shall not be applicable to the claimant under more than one of the paragraphs 1 to 8 (and, for that purpose, paragraphs 1 and 2 shall count as one) and, if there is a choice, the higher or highest amount shall be applicable;". The tribunal concluded that the claimant's entitlement to a heating allowance at the lower rate had been correctly assessed under paragraph 3 of the said Schedule 4, but failed to record any findings of fact as to whether the claimant satisfied the provisions of three of the sub-paragraphs in paragraph 1. In my view they erred in law by failing to comply with regulation 19(2)(b) of the Adjudication Regulations.

13. Since the material facts have not been found, it is neither expedient, nor possible, for me to give the decision that the tribunal should have given. Accordingly, the case must be referred to another tribunal, which should be differently constituted, for determination of the issues in accordance with my directions. My decision is set out in paragraph 1.

14. The claimant's appeal is allowed.

(Signed) R.F.M. Heggs
Commissioner

Date: 9 September 1986