

Fares to visit blind daughter at residential school.

RAS/10/LS

Commissioner's File: CSB/633/1987

Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Donald Victor Harris

Social Security Appeal Tribunal: Birmingham

Case No: 73/06

1. Mr Donald H.'s eldest daughter Amanda attends, or at any rate at the time in question, attended a residential school for blind children. It was about 170 miles from where Mr H and his wife and their other daughter lived. A meeting took place every few weeks at the school for parents to discuss matters with each other and with the staff. On 11 August 1986 Mr H. who was then in receipt of a supplementary allowance made a claim for a single payment under the Supplementary Benefit (Single Payments) Regulations 1981 in respect of his travelling expenses to and from the school. An adjudication officer considered the claim by reference to regulations 22(1)(i) and 30 of those Regulations but decided that, as in his view the conditions were not satisfied, no award should be made. Mr H. appealed to a social security appeal tribunal. By a majority they decided that Mr H. was not entitled to a single payment for his travelling expenses incurred on 24 August 1986. No one seems to know why they chose or limited themselves to that date. Nor does anyone seem to know what travelling expenses on what dates the adjudication officer's decision related to. That is because, as usual, there is no copy of the decision. Mr H. then appealed to the Commissioner. At the oral hearing before me he was represented by Mr A. Dunn of Counsel. Mr P. Darby of Counsel represented the adjudication officer.

2. Mr Dunn and Mr Darby were agreed and there is no doubt that the tribunal's decision was erroneous in law. In relation to regulation 22(1)(i) they failed to make the findings of fact which are necessary to the application of that provision. And in relation to regulation 30 they wrongly took account of events subsequent to the date of the claim to decide that a single payment was not the only means by which serious damage or serious risk to health or safety might be prevented. So the claimant's appeal succeeds. I set aside the tribunal's decision and direct that the case be reheard by a differently constituted tribunal. The real issue in this appeal is that of the other directions to be given to the new tribunal.

3. A number of matters arise on the facts of this case in relation to regulation 22(1)(i) which provides for the making of a single payment where -

"(i) a member of the assessment unit is visiting a person who is resident in a registered nursing home or residential care home as defined in regulation 9(b)(i) and (ii) of the Supplementary Benefit (Requirements) Regulations 1983 or being cared for in a local authority home or hostel pursuant to Part III of the National Assistance Act 1948 (provision of residential accommodation by local authorities) or paragraph 2(1) of Schedule 8 to the National Health Service Act 1977 (prevention, care and after care) or sections 12 and 59 of the Social Work (Scotland) Act 1968 (care of persons under 18 and provision of residential and other establishments by local authorities), who is

- (i) a close relative of the visitor, or
- (ii) not being a close relative is related to the visitor, or
- (iii) prior to his admission to that accommodation was a member of the same household as the visitor,

and the circumstances of the visit are such that no additional requirement is applicable, and in a case to which head (ii) applies there is no other relative of his who has visited him recently and who intends to continue visiting him;"

The first thing to say is that reference to a "residential care home as defined in regulation 9(b)(i) and (ii) of the Supplementary Benefit (Requirements) Regulations 1983" is misconceived. There is no such provision in regulation 9 of the Requirements Regulations. There is a definition of "residential care home" in paragraph 6(1) of Schedule 1A to those Regulations (as amended by S.I. 1987/1325) and I suppose I have to accept that that definition applies. It includes an establishment incorporated by Royal Charter. I am told that the residential school in question was so incorporated but that is something that needs to be established before the new tribunal. Then the new tribunal must deal with the words in the provision "the circumstances of the visit are such that no additional requirement is applicable". That is presumably a reference to paragraph 17 of Schedule 4 to the Requirements Regulations which provides for an additional requirement where one person regularly visits another "who is a patient in any hospital or similar institution" and the other conditions of the provision are met. At the end of the paragraph it is stated that references to a patient in a hospital or similar institution include a reference to a person "who is resident, either temporarily or permanently, in ... accommodation registered under the Residential Homes Act 1980 ...". However, a home which is incorporated by Royal Charter is not required to be registered under the 1980 Act or indeed under the Registered Homes Act 1984 which replaces that Act. But that does not seem to me to matter in this case because the words in paragraph 17 of Schedule 4 "references to a patient in a hospital or similar institution include ..." (my underlining) do not exclude a person like Amanda who was resident in a home not required to be registered because it was incorporated by Royal Charter. She is to be regarded as a patient in a hospital or similar institution for the purposes of the provision. In saying that, I distinguish CSB/1129/85 because the words at the end of paragraph 17 to which I have referred in my view make a crucial difference. So the tribunal must decide whether it is a case for an additional requirement under paragraph 17 of Schedule 4 or a single payment under regulation 22(1)(i) of the Single Payments Regulations. What is common to both is that the facts must amount to a visit or series of visits on the part of Mr H. to Amanda. I make that point because it was Mr Darby's contention that as on the facts of the day with which the tribunal concerned themselves Mr H. accompanied Amanda to the school he could not be said to have visited her there - he visited the school or the staff or the other parents or all of those but not Amanda. Now as I understand the facts Mr H., after taking Amanda to the school, spent some time with the staff and other parents and then went to see Amanda before he left. It does not seem to me to be fatal to the idea of his visiting her that they went to the school together. However the new tribunal must decide on the facts that they will find whether what happened on this and other occasions amounted to a visit or series of visits. Mr Darby agreed that if it did then Mr H., was entitled either to an additional requirement or a single payment depending on whether the facts as the tribunal finds them come within one provision or the other. If in the circumstances Mr H. does not in the tribunal's view visit his daughter when he goes to the school so that neither paragraph 17 of Schedule 4 to the Requirements Regulations nor regulation 22(1)(i) of the Single Payments Regulations applies, the tribunal must consider whether entitlement arises under regulation 30 having regard to the circumstances as at the date of the claim: R(SB) 26/83. And both in relation to regulation 22(1)(i) and regulation 30 the new tribunal must have regard to the distinction required to be made between an exceptional need for which a single payment may be made and a regular recurring need for which it may not. This arises because of the words "to meet an exceptional need" in

section 3(1) of the Supplementary Benefits Act 1976 in relation to which Glidewell L.J. said in Vaughan v Social Security Adjudication Officer (July 1986, unreported, at pages 8 to 9 of the transcript) -

"In my judgment the phraseology, "single payment to meet an exceptional need" makes it clear that an exceptional need is to be distinguished from a regular, recurring need. An exceptional need may involve expenditure on a single occasion - as on the purchase of bedding, or for fares for a single journey - or may cover expenditure on several occasions over a limited period of time - e.g. for fares for several journeys to visit a child who is with the other parent pending a decision by the court as to custody of the child (regulation 22(1)(c)). But if the need does involve expenditure on several occasions, it must be a need which will come to an end after a limited, temporary period if it is to satisfy the wording of the Act. The scheme of the Act of 1976 and of the regulations made under it distinguishes between regular, recurring needs and exceptional needs. If there is a recurring need of a kind which does not come within the Requirements Regulations, supplementary benefit to meet that need is not payable."

4. Section 102 of the Social Security Act 1975 (questions first arising on appeal) applies in relation to adjudication in supplementary benefit matters as from 6 April 1987: section 52(3) of the Social Security Act 1986 and S.I. 1986/1958. Accordingly the new tribunal may deal with the question of an additional requirement under paragraph 17 of Schedule 4 to the Requirements Regulations as a matter first arising before them.

(Signed) R A Sanders
Commissioner

(Date) 28 April 1988