Reported R(SB)41/84

CSB 697/1983

JBM/ST

Furniture grant / Epilepsie

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

Definition / Chronic

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: John Dean Daulphin

Supplementary Benefit Appeal Tribunal: Manchester

Case No: 14/353

1. My decision is that the decision of the Manchester Supplementary Benefit Appeal Tribunal dated 27 April 1983 is erroneous in point of law. Accordingly I set it aside and remit the case for hearing by a differently constituted appeal tribunal; rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 as amended by rule 6(2) of S.I. 1982 No 40.

2. This appeal by the claimant to the Commissioner with the leave of the Commissioner is against the unanimous decision of the appeal tribunal confirming the decision of the benefit officer issued on 28 February 1983 "Refusal of a single payment for furniture".

3. The facts and history of the matter are dealt with in Form LT205 and in paragraphs1 - 7 inclusive of the submission dated 28 November 1983 by the benefit officer now concerned on which the claimant and his advisers have had the opportunity to comment. It would serve no useful purpose to set these matters out afresh here.

4. The relevant statutory provisions and decision of the Commissioner are referred to at paragraph 8 of the submission dated 28 November 1983. Nothing is to be gained by my setting out those references afresh here.

5. The decision of the appeal tribunal is erroneous in law in that they failed to make adequate findings of fact or give adequate reasons for their decision. On the face of the record the claimant is unable to determine why his evidence failed to satisfy the tribunal. The tribunal further erred in law in that they mislead themselves by an immaterial consideration. From the chairman's note of evidence it appears that the tribunal had evidence before them that the claimant was allocated local authority accommodation because his mother's home was overcrowded. The tribunal failed to make any findings of fact on this evidence before them. Further the tribunal failed to give any reasons for the rejection of such evidence. I need only refer to paragraph 14 of the decision of the Commissioner being R(SB)11/82.

See CSB 598/1983

6. Regulation 10(1)(a)(ii) of the Supplementary Benefit (Single Payments) Regulations 1981 as amended by S.I.1982 No 907, provides as follows:-

> "(ii) the assessment unit includes a dependant, or a member who is over pensionable age, pregnant, chronically sick or mentally or physically disabled;"

The tribunal made findings of fact that the claimant suffered from epilepsy. However if the tribunal considered the above regulation they failed to give adequate reasons for their decision that it was not satisfied.

As appears from its Greek derivation "chronic" denotes length of time. I note the definition of "chronic" given in Chambers 20th Century Dictionary as of "a disease, deep seated or long continued, as opposed to "acute"." Accordingly the claimant's epilepsy as it had continued for a long period could be rightly described as "chronic".

In this regard paragraph 11 of the submission dated 28 November 1983 of the benefit officer now concerned reads as follows:-

> "However, the relevant words /that is "chronically sick"/ have to be construed in the context of that provision /Regulation 10(1)(a)(ii)/. Since the persons described in Regulation 10(1)(a)(ii) form a category of persons who are not subject to the requirements of the following words to Regulation 10(1)(a) - "there is no suitable furnished accommodation available in the area", it is submitted that the expression "chronically sick" has to be interpreted as meaning a person suffering from a chronic illness who cannot reasonably be expected to move again to suitable alternative furnished accommodation because of his state of health. Likewise, if epilepsy is held to be a mental disablement, the degree of disablement must, I submit, be such that it would be unreasonable to expect the claimant to move again. As the claimant was registered and available for employment at the relevant time, a tribunal would be entitled to hold that the claimant was neither chronically sick nor mentally disabled provided the appropriate findings of fact could be made and adequate reasons for the decision given."

I reject this submission. The words "chronically sick or mentally ... disabled" must be read in their ordinary meaning and no such additions as the benefit officer now concerned contends for are to be read in or implied. Neither of these additions can be made in law and the regulation must be read as it stands. The main supplementary benefit case on statutory interpretation is R(SB)16/83, in particular paragraph 13 of that decision. Unless the plain meaning of words used in the Act or Regulations produces an anomaly or a choice between interpretations then the words in the statutory provisions must be given their ordinary meaning. Support for this proposition is found in the judgement of Jervis CJ at page 392 of Abley v Dale (1851) 11 CB 378 as follows:-

"But, without speculating upon the motives of the legislation we are not at liberty to depart from the plain meaning of the words used..."

There is no ambiguity about the word "chronically". I have referred to the definition given in the current edition of Chambers 20th Century Dictionary earlier in this paragraph. Further the definition of "chronic" in the current Shorter Oxford Dictionary is given as "lasting a long time or lingering, inveterate opposite to acute/ constant." It could be argued (though for the reasons given below I reject this argument) that this would produce anomalies - a person's sickness might have no effect on his working ability or choice of accommodation - this argument then runs that as the anomaly exists which must be taken into account it is necessary to look for another meaning. This is not a permissible approach - see Lord Scarman at page 238 of the House of Lords decision of Stock v Frank Jones (Tipton) Ltd /1978/ 1 W.L.R 231. There is no absurdity in this case and there is no ambiguity to warrant the addition suggested by the benefit officer in the above written submission. There is an express prohibition on the benefit officer doing what is submitted in the written submission here - see Magor and St Mellons Rural District Council v Newport Corporation /1951/ 2A.E.R 839 where Lord Simonds at page 841 says:-

"What the legislature has not written, the court must write. This proposition ... cannot be supported. It appears to me to be a naked use of the legislative function under the thin disguise of interpretation, and it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act."

In his application for leave to appeal dated 12 May 1983 the claimant states as his ground the following:-

"The second reason for the decision, stated by the tribunal, was irrelevant to the application, erroneous in law and contrary to the rules of Natural Justice. The tribunal were wrong in accepting heresay evidence from the DHSS officer from a third party. In addition the regulation do /sic/ not at any place require that the future intentions of the applicant, however speculative, should be taken into account. The applicant has never lived with the mother of his children and on the DHSS' own heresay evidence, the third party did not wish the applicant to move in with her."

I accept that the tribunal further erred in law on the grounds above stated.

8. In accordance with my jurisdiction under rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 as amended by rule 6(2) of S.I. 1982 No 40 my decision is as set out in

paragraph 1 of this decision. I direct that the appeal tribunal to whom I remit this case in rehearing the matter should pay particular attention to all the matters to which I have referred in this decision above and shall also consider carefully the exact wording of the relevant regulations and make and record their findings on all the material facts and give reasons for their decision.

9. Accordingly the claimant's appeal is allowed.

(Signed) J B Morcom
Commissioner

Date: 21 March 1984

Commissioner's File: C.S.B 697/1983
C S B O File: 784/83
Region: North Western

Reported R(SB) 41/84

From Wandsworth Resource

CSB 697/1983

Furniture grants for Epileptic
Definition of 'Chronic'

JBM/ST

SUPPLEMENTARY BENEFITS ACT 1976

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DECISION OF SOCIAL SECURITY COMMISSIONER

Supplementary Benefit Appeal Tribunal: Manchester

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3. The facts and history of the matter are dealt with in Form LT205 and in paragraphs1 - 7 inclusive of the submission dated 28 November 1983 by the benefit officer now concerned on which the claimant and his advisers have had the opportunity to comment. It would serve no useful purpose to set these matters out afresh here.

4. The relevant statutory provisions and decision of the Commissioner are referred to at paragraph 8 of the submission dated 28 November 1983. Nothing is to be gained by my setting out those references afresh here.

5. The decision of the appeal tribunal is erroneous in law in that they failed to make adequate findings of fact or give adequate reasons for their decision. On the face of the record the claimant is unable to determine why his evidence failed to satisfy the tribunal. The tribunal further erred in law in that they mislead themselves by an immaterial consideration. From the chairman's note of evidence it appears that the tribunal had evidence before them that the claimant was allocated local authority accommodation because his mother's home was overcrowded. The tribunal failed to make any findings of fact on this evidence before them. Further the tribunal failed to give any reasons for the rejection of such evidence. I need only refer to paragraph 14 of the decision of the Commissioner being R(SB)11/82.

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