

MHJ/2/LS
Baths - tribunal to consider need ^{whether} for more than 1 bath a week on medical grounds
or not be diverted by irrelevant considerations of what is "normal" for a child of this age.
Commissioner's File: CSB/702/1985
C A O File: AO 2484/85
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:
Social Security Appeal Tribunal: Rochdale
Case No: 15/18/7

1. My decision is that the decision of the Rochdale social security appeal tribunal is erroneous in point of law. Accordingly I set it aside and remit the matter to be reheard by a differently constituted appeal tribunal.
2. The claimant appeals to the Commissioner with leave of the chairman of the appeal tribunal against the unanimous decision of the Rochdale social security appeal tribunal dated 11 April 1985 confirming the decision of the adjudication officer issued on 18 November 1984 that the claimant was not entitled to an additional requirement in respect of the cost of extra baths for her daughter.
3. The claimant, who is a divorced woman, has one dependent daughter, now aged 5 who, it is common ground, was at all material times incontinent. It was in those circumstances that the claimant, who has been in receipt of supplementary benefit since September 1984, applied shortly thereafter for various additional allowances, including an "additional payment for extra laundry and bathing costs". These were treated, perfectly correctly, as being two separate applications under regulation 11 of the Supplementary Benefit (Requirements) Regulations 1983, to which paragraphs 11 and 18 of Part II of Schedule 4 thereof applied.
4. In the event the tribunal found that the claimant satisfied the conditions of paragraph 18 and awarded her a "laundry addition", but rejected her appeal regarding the extra cost of baths which is, therefore the only issue now before me.
5. Schedule 4 of the Requirements Regulations sets out the "Items and cases applicable" to claims for additional requirement allowances and the weekly amount thereof, and paragraph 11 of Part II reads -

"Baths

11. Person who on medical grounds needs more than one bath a week".

6. The appeal tribunal recorded as their findings on questions of fact material to their decision, inter alia, that -

"The [claimant's] daughter is incontinent & wets her bed every night.

.....

The child has a bath each morning and evening".

And gave as their reason for disallowing the claimant's appeal -

"The Tribunal do not consider that 2 baths or full washings per day for a child of nearly 4 is above average".

7. The adjudication officer now concerned, in his helpful submission dated 10 June 1985, supports the claimant's appeal on the basis that the tribunal had no or no proper regard for the clear terms of paragraph 11 which, in effect, stipulates that one bath a week is "sufficient for normal healthy people", to adopt the phraseology of the note to the paragraph in the Second Edition of Mesher's "Supplementary Benefit and Family Income Supplement: The Legislation". He then goes on to submit that, "notwithstanding the fact that the tribunal found that the claimant's daughter is incontinent and has 2 baths a day", they erred in law in failing to find whether the need for those baths was on medical grounds and, accordingly, the matter should be remitted for rehearing by a new tribunal. The adjudication officer now concerned further submits that -

"on the facts found no tribunal acting judicially and properly instructed as to the relevant law could have come to the decision reached".

I am in complete agreement with the adjudication officer now concerned.

8. In the circumstances it is with great reluctance that I have come to the conclusion that this case must, as the adjudication officer now concerned submits, be reheard by a differently constituted tribunal, and that it would not be proper for me to substitute my own decision pursuant to regulation 27(a)(i) of the Social Security (Adjudication) Regulations 1984. The claimant says in her letter seeking leave to appeal (stamped as received on 7 May 1985):-

"... my daughter requires more than one bath a week, a fact not disputed by the Tribunal. That this requirement is based on her medical condition, ie incontinence. A further fact accepted by the tribunal".

And it seems to me undeniable that incontinence in a child of the claimant's daughter's age is a medical condition, of which I could take judicial notice without the need for expert medical evidence. However, the tribunal were diverted by irrelevant considerations of what, in their opinion, was normal for a child of that age, and they never applied their minds to the proper considerations. Whether or not two baths a day are necessary must be a question of fact depending upon many things including, no doubt, the nature of the child's incontinence. Unfortunately there is insufficient evidence before me to enable me to form any view as to what might be appropriate. These are questions which will have to be considered and determined by the new tribunal.

9. The claimant's appeal is allowed and my decision is as set out in paragraph 1.

(Signed) M H Johnson
Commissioner

Date: 5 September 1986