

Diet addition - pregnancy - claimant anaemic.

VGHH/BC

Commissioner's File: CSB/790/1986

C A O File: AO 2731/SB/86

Region: London South

SUPPLEMENTARY BENEFITS ACT 1976

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

Name: Janet C (Mrs)

Social Security Appeal Tribunal: Kensington

Case No: 11/028/12

1. This appeal succeeds. My decision is that the decision of the social security appeal tribunal dated 8 April 1986 is erroneous in point of law. I set it aside and refer the case to another social security appeal tribunal for determination in accordance with my directions.

2. On 4 February 1985 an adjudication officer decided that the claimant was not entitled to an additional requirement for diet on the grounds of pregnancy. The claimant appealed against this decision to a social security appeal tribunal who on 8 April 1986 disallowed the appeal.

3. It is settled by at least three decisions of the Commissioner that where the pregnancy is a normal one an additional requirement for diet does not fall within the terms of paragraph 14 of Schedule 4 to the Social Security (Requirements) Regulations 1983: see decision CSB/915/85 (Mr J G Monroe); CSB/285/1985 (Mr D G Rice) and CSB/560/1985 (a decision of my own). But the tribunal's findings of fact show that there was before them a contention that the claimant was anaemic. The case bears some resemblance to decision CSB/560/1985 where there was a pregnancy but there was also a contention that, due to the special circumstances associated with a rapid succession of pregnancies, the last child had been born dead and the claimant was suffering from malnutrition: see paragraph 16 of that decision.

This is a condition which might fall within sub-paragraphs (a) or (e) of paragraph 14 of Schedule 4: see the wording of that paragraph which is set out in the written submission of the adjudication officer now concerned. Now the tribunal said that there was no evidence that the claimant was anaemic. But they accepted that the claimant had a fall in haemoglobin. Blakiston's New Gould Medical Dictionary describes anaemia as "a significant reduction below normal in the hemoglobin concentration, and the volume of packed red cells..." and Black's Medical Dictionary (33rd Edition) describes it as the condition characterised by inadequate red blood cells and/or haemoglobin in the blood. Why then did the tribunal hold that there was no evidence of anaemia? The claimant is left guessing on a material point. This is an error of law. The tribunal went on to hold that there was no evidence that the claimant had to follow a special diet. But the claimant supplied a considerable amount of evidence: see, for some of it, the chairman's note of evidence. Failure to deal with this evidence constituted a further error of law.

4. It is not expedient or possible to give the decision that the tribunal should have given, since this would involve finding further facts. Accordingly, I set aside the decision of the tribunal of 8 April 1986 and refer the case to another tribunal for determination. In accordance with the usual practice, that tribunal should be entirely differently constituted.

5. The fresh tribunal should ensure that they deal with the question whether "anaemia" is a condition falling within one of the sub-paragraphs of paragraph 14 of Schedule 4 to the Requirements Regulations. Directions on the application of these sub-paragraphs are given in decision CSB/1356/1985. The tribunal should follow them with this proviso:- in respect of the points raised paragraph 20(2) of this decision in a copy of which should be before the tribunal, the Chief Commissioner has appointed a Tribunal of Commissioners in the case of CSB/0688/86. If on the facts found by them the point discussed in paragraph 20(2) proves to be material the tribunal should consider standing over the appeal until the decision of the Tribunal of Commissioners (if not already given) is available.

6. My decision is set out in paragraph 1.

(Signed) V G H Hallett
Commissioner

Date: 6 February 1987