

MASTER

Failure to give adequate reasons
for rejecting GPs letter.

MJG/SH/15/MD

Commissioner's File: CSB/0798/1986

C A O File: AO 2872/86

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: G. Q.

Social Security Appeal Tribunal: Rochdale

Case No: 25/05

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 2 June 1986 as that decision is erroneous in law and is set aside. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to a differently constituted social security appeal tribunal: Supplementary Benefits Act 1976, section 2 and the Social Security (Adjudication) Regulations 1984, regulations 19 and 27.

2. This is an appeal to the Commissioner by the claimant, a married man living with his wife. At the material time he was aged 25 and his wife aged 22. The appeal is against the unanimous decision of the social security appeal tribunal dated 2 June 1986, refusing a single payment to the claimant for a dining table, four chairs, settee, iron, floor covering, chest of drawers, towels, curtains and fittings, household equipment and a number of other minor items. In order to be able to claim these items the claimant had to bring himself within regulation 10(1)(b) of the Supplementary Benefit (Single Payments) Regulations 1981, ie because the claimant had not recently become the tenant or owner of an unfurnished or partly furnished home, having obtained the tenancy of his then present address on 8 July 1985 and the claim for the single payment not being made under 3 January 1986. Even therefore, if the new tribunal should be minded to allow the claim for the single payment it cannot allow the claim for "minor items such as cleaning implements, cooking utensils, crockery and cutlery" because of the provision of regulation 9(1) of the Single Payments Regulations that those are obtainable only in a case to which regulation 10(1)(a) applies ie where the claimant has recently become the tenant or owner of an unfurnished or partly furnished home.

3. However, the major point in this appeal is whether or not the claimant could satisfy the requirements of regulation 10(1)(b) of the Single Payments Regulations. There are four alternative possibilities under regulation 10(1)(b) and it is common ground that the only one that could possibly have applied at the relevant time to the claimant is to be found in regulation 10(1)(b)(i) which requires there to be a situation where, "the assessment unit includes a dependant, or a member who is over pensionable age, pregnant, chronically sick or mentally or physically disabled". It is not suggested that the claimant himself comes within any of those categories but it is contended that his wife, at the date of claim on 3 January 1986, came within the words "chronically sick or mentally...disabled" because she was suffering from mental depression at that time. There were before the local tribunal

two letters on this subject from the claimant's general practitioner, the first dated 19 December 1985 and the second dated 23 May 1986. These letters should be placed before the new tribunal that rehears this case. In the second of those letters the doctor states,

"...regarding the claimant's wife], I confirm that in my opinion at 3 January 1986, [the claimant's wife] was suffering from reactive depression, for which she required treatment with anti-depressants. The condition had been present at least from 1 October 1985, and treatment continued until the end of February, 1986. In my view, she is not mentally disabled, but chronically sick by reason of reactive depression."

4. However, the tribunal that heard the case gave as its finding of fact (and also a reason for decision),

"Applying the rules set out in R(SB)41/84 the tribunal felt that the term 'chronically sick' could not apply to the claimant albeit the letter from his GP referred to this. The dictionary definition of chronic is 'long lasting' (Concise Oxford) and it would seem that the G.P's letter meant 'acute' rather than 'chronic'."

Both the claimant's representative and the adjudication officer now concerned concur in submitting to the Commissioner that in so doing the tribunal did not comply with the requirements of R(SB)33/85 and in particular paragraph 15 of that decision requiring them to state with some particularity their reasons for rejecting the claimant's GP's statement that his wife was "chronically sick". They were entitled to reject this, provided they did so judicially, even though they had not medical qualifications. But reasons were necessary for doing so and there are really no sufficient reasons to be found in their record of decision on Form AT3.

5. Accordingly, the new tribunal will need to deal with the whole matter anew. The matter is not 'pre-empted' by the GP's letter, though it is of course a very cogent piece of evidence, and the new tribunal must make its own assessment of whether or not at the relevant time the claimant's wife was "chronically sick or mentally... disabled". That is ultimately a question of fact and, as appeal to the Commissioner in this jurisdiction lies only on a question of law, I say no more about the matter except to indicate that my having allowed the appeal in this case is no indication by me of whether or not on its factual and substantive merits the claimant's appeal should succeed. I have allowed the appeal solely because of the want of compliance with regulation 19(2)(b) of the Adjudication Regulations, requiring adequate findings of fact and reasons for decision to be given. I ought perhaps to add that in this type of case the reasons that a tribunal can give for its evaluation of such words as "chronically sick" and "mentally disabled" must of necessity be brief, because ultimately an informed valued judgment is all that can be made, but some attempt must be made by the tribunal to furnish sufficient information to a claimant to know why his claim has failed, if such is the case.

(Signed) M.J. Goodman

Commissioner

Date: 5th March 1987