

Diet - pregnancy - anaemia

JBM/SH/16/MD

Commissioner's File: CSB/1038/1986

C A O File: AO 2910/SB/1986

Region: London North

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: Shoreditch

Case No: 36/10

1. My decision is that the decision of the Shoreditch social security appeal tribunal dated 9 July 1986 is erroneous in point of law. Accordingly I set it aside and remit the case for hearing to a differently constituted appeal tribunal.

2. The facts and history of the case are dealt with partly by reference in paragraphs 1 to 4 inclusive of the submission dated 2 October 1986 of the adjudication officer now concerned on which the claimant has had the opportunity to comment (and has in fact so commented). No useful purpose would be served by my setting out these matters afresh here.

3. The relevant statutory provisions and paragraph 14 of Schedule 4 to the Requirements Regulations 1983 are set out respectively in paragraphs 5 and 7 of the submission dated 2 October 1986 of the adjudication officer now concerned. Nothing is to be gained by my setting out these matters afresh here.

4. In my judgment the decision of the appeal tribunal is erroneous in point of law in that it breaches the provisions of regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984. The claimant does not contend that (a) or (b) of paragraph 14 of Schedule 4 has any application and it is manifest that sub-paragraphs (a), (c) and (d) also have no application. The claimant seeks to apply sub-paragraph (e) on the grounds either of the pregnancy or side effects of the pregnancy. I need only refer to decision CSB/285/1985 at paragraph 6 where the Commissioner stated that unless it involves some complications pregnancy would not bring a person within the provisions of paragraph 14(a) or (e). The tribunal had no evidence before them that the claimant followed a "special diet" and in this regard I need only refer to paragraph 8 of CSB/285/1985. Although in their findings of fact on the face of the record the tribunal record that there was no evidence of any complications in the claimant's pregnancy requiring a special diet but they have failed to record why the claimant's evidence, that she suffered from anaemia, did not amount to a "complication" to her pregnancy.

On 26 February 1987 I made the following direction:-

"I require a submission within 21 days of promulgation as to the effect of a decision of

a Tribunal of Commissioners in CSB/688/86 (when promulgated) on this case."

In response to my direction I received the claimant's comments which are noted as having been received at the Office of the Commissioner on 3 June 1987 and a submission of the adjudication officer dated 23 June 1987. All I need say in that regard is that I accept the submission of the adjudication officer dated 23 June 1987 and I see no point in setting it out afresh here.

5. In accordance with my jurisdiction set out in regulation 27 of the Social Security (Adjudication) Regulations 1984 my decision is as set out in paragraph 1 of this decision. I direct that the tribunal to whom I remit this case in rehearing the case shall pay particular attention to all the aspects to which I have referred above. Further they shall 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.

6. Accordingly the claimant's appeal is allowed. All issues of fact are fully at large before the new tribunal.

(Signed) J B Morcom
Commissioner

Date: 16 November 1987