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SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Paula Edwards (Mrs)

Social Security Appeal Tribunal: Southampton

Case No: 18/20

1. (1) This is a claimant's appeal from the unanimous decision dated 29 May 1984 of a social security appeal tribunal ("the tribunal") brought by leave of the tribunal chairman and upon the contention that the tribunal's decision was given in error of law. The claimant has requested an oral hearing of her appeal, but I am refusing that request as I am satisfied that the appeal can properly be determined without an oral hearing.
 - (2) Materially, the tribunal's decision upheld the decision of a supplementary benefit officer issued on 4 October 1983 refusing any award in respect of a claim instituted by the claimant on 30 September 1983 in respect of shoes for her children. I say "materially" because the claimant had on foot another claim made a few days earlier in connection with the lighting in her kitchen, but whilst the benefit officer on 4 October 1983 rejected that claim also, and it also went on appeal to the tribunal, that appeal was decided by the tribunal in the claimant's favour and that claim is accordingly not in issue upon the present appeal.
 - (3) As regards the claim for shoes the adjudication officer now concerned concedes that the tribunal's decision does embody errors of law, and I agree.

 - (4) I set aside the tribunal's decision in respect of the claim for shoes and I direct that her appeal from the benefit officer's decision on that claim be re-heard by a differently constituted appeal tribunal. I do not consider it expedient in the circumstances of the case to seek to give myself the decision which the tribunal should have given, as in my judgment a proper determination will involve the ascertainment and finding of additional facts.
2. It is common ground that the claimant, a divorced woman, was at the date of her material claim living with her 2 dependant children aged 8 and 14 years respectively in owner-occupied accommodation, was in receipt of supplementary allowance, and had reckonable capital of under £100. There is no written claim on the present case file, but it is apparent that her claim for shoes has hitherto been entertained only in the context of a

claim under the Single Payments Regulations. It will be for the tribunal re-hearing the appeal to consider and determine whether or not such claim properly falls to be entertained additionally as a claim for an additional requirement in respect of the cost of shoes (see further paragraph 5(2) below). Moreover, doubt has been expressed by the adjudication officer now concerned as to whether the material claim fell properly to be considered as a claim for shoes for both the children (being respectively a son and a daughter), or only for shoes for the daughter; but it is in my judgment clear that the claimant was claiming for shoes for both children, and the tribunal re-hearing the appeal are to proceed on the footing that there are in fact separate claims to that intent.

3. The basic contention of the claimant in support of her claims was that the need for awards stemmed from the circumstances that her children were growing faster than normal and that they were significantly above normal size for their respective ages. It is apparent from the contents of the form LT205 put before the tribunal that the benefit officer took the claim under consideration in the contexts both of regulation 27 and of regulation 30 of the Single Payments Regulations but concluded that the circumstances of the case did not meet the qualifying requirements under either head.

4. Before the tribunal the claimant conducted her own appeal and supported her case by reference both to medical evidence and to a "Growth and Development Chart" produced under the auspices of the Hospital for Sick Children, Great Ormond Street, London; and she contended that in addition to his rapid growth and attained size her son had abnormal feet. The tribunal adjourned their initial hearing in order to enable the presenting officer to consider this evidence, and in a written submission prior to the resumed hearing the presenting officer both adhered to the contention that the requirements for an award of single payments were not satisfied and indicated that he had taken into contemplation also the provisions of the Requirements Regulations as to the award of an additional requirement in the context of the claimant's claim for shoes, but considered that those provisions also could not be satisfied in the circumstances of the case.

5. (1) That intimation by the presenting officer did not in my judgment constitute any separate decision by an adjudicating authority; but it was, in my view, clearly in the nature of an acknowledgement to the tribunal that the scope of the claim might properly be taken to include a claim for an additional requirement.

(2) It will nevertheless be for the tribunal re-hearing the appeal to form their own conclusion as to whether or not such acknowledgement was properly founded, and I will say no more as to that than that the tribunal re-hearing the appeal should not be over-technical in construing the scope of the claim but will not in my judgment be at liberty to entertain it as a claim for an additional requirement if upon a proper appraisal of its tenor it was a claim only for one or more single payments.

6. However, as the matter stood before them it was in my judgment clearly incumbent on the tribunal to include in their decision findings and reasons for decision relative to the views expressed by the presenting officer's submission in reference to an additional requirement, whether or not in the light of such findings they needed also to give a substantive decision upon

the footing that there was a claim under that head falling for decision by them. And since they have omitted to make proper reference to that aspect of the case in the record of their decision, their decision was in my judgment in error of law in that respect, all others apart. For whilst it is perhaps doing less than justice to the tribunal to say that they made no reference to the claim in the context of an additional requirement, since their reasons for decision include an intimation that:-

"The appellant's real need is not so much for a single payment as for a general increase in her weekly allowance."

that, if to be read as referable a claim for an additional requirement leads only to the alternative error of law that, having identified that as a separate aspect of the case, they have failed to make findings or give a substantive decision or state reasons referable to it.

7. (1) Save for referring to a clothing grant of which they held the claimant to be in receipt, what the tribunal have indicated under the head of "findings on questions of fact" is expressed in the unsatisfactory form of recording what the claimant "stated" without indicating whether the tribunal accepted or rejected the evidence so recorded. And the tribunal do not appear to have directed their attention to resolving in any itemised way what it was that the claimant asserted was or were at the claim date the need or needs upon which the claim (more accurately the several claims as regards the children respectively) were founded. And, as the adjudication officer now concerned correctly observes, what on the face of it might seem a composite claim for a number of different items was, in correct contemplation, a set of distinct claims each relating to a particular item: see Decision R(SB)42/83. The tribunal's omission to clarify the position in those respects has inevitably led to their failing to "ask themselves the right questions", and that in turn to their having omitted to make relevant findings of fact. Only when the tribunal had properly identified the items being claimed for could they put themselves into a position to evaluate by reference to the claim date whether or not the claimant had demonstrated need for the items in question (the claim date being the date material for their determination in the context of the Single Payments Regulations - see Decision R(SB)26/83).

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- (2) The tribunal's decision was expressed as a decision "to confirm the decision of the Supplementary Benefit Officer". The stated reasons for decision, (apart from their already cited reference to the claimant's "real need") was:-

"The Tribunal are satisfied that both the children are growing at a more than average rate ... As regards the request for a clothing grant for shoes, with some regret the Tribunal feel that no grant is applicable either under regulation 22 or regulation 30".

- (3) That reference to regulation 22 is, I am prepared to infer, a clerical error, it having been regulations 27 and 30 to which the tribunal had been referred - but it is not one which inspires confidence as to the tribunal having come to close grips with the regulations.

8. However, the fundamental error of law to be attributed to the stated reasons for decision is that it is impossible for the claimant or anyone else reading them to glean from them how and why, in the contexts of the two material regulations respectively, the claimant's contentions had foundered. Put more technically, the tribunal were, in my judgment, in clear and substantial breach of their obligations under regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984 as to sufficiently stating findings of fact and grounds for decision.

9. The tribunal re-hearing the appeal are to be furnished with a copy of my present decision as some assistance to them in pitfalls to be avoided, but are to bear closely in mind that all questions of fact will be again at large for their own determination.

10. I should by way of precaution add that by letter of 14 November 1984 the claimant has made submissions and provided additional case materials which should be included as case papers before the tribunal re-hearing the appeal.

11. My decision is as indicated in paragraph 1(4) above.

(Signed) I Edwards-Jones
Commissioner

Date: 23 January 1985

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Region: London South