

AR for heating on grounds of serious physical illness.
-tribunal must give its own independent judgement
and is not bound by one doctor's opinion. (see 74/505)

MJG/SH/19/MD

Commissioner's File: CSB/1148/1986

C A O File: AO 3183/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: George Anthony Ford

Social Security Appeal Tribunal: Luton

Case No: 33/12

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 6 December 1985 as that decision is erroneous in law and I set it 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: Social Security Act 1975, section 101(5), as substituted by paragraph 7(3) of Schedule 5 to the Social Security Act 1986.

2. This is an appeal to the Commissioner by the claimant, a man aged 57 at the relevant time, against the unanimous decision of the social security appeal tribunal dated 6 December 1985 confirming the decision of a local adjudication officer issued on 27 March 1985 refusing to review the amount of the claimant's heating addition (£2.10 per week). That decision was given in response to a letter dated 7 March 1985 from the claimant to the local office requesting that he be allowed the higher rate of heating addition (see below) as he had then been diagnosed as suffering from a disease called "Myasthenia Gravis". In that letter the claimant also requested that any award of the higher rate heating addition be back-dated for 12 months, as he would have suffered from the disease for that length of time, even though it had only recently then been diagnosed. It appears from paragraph 6 of the statement of facts of the local adjudication officer to the local tribunal that it had been "ascertained that Myasthenia Gravis is a muscular weakening disease that particularly affects the eyes". The new tribunal that rehears this case should endeavour to ascertain as much as possible about this disease and its effects, in view of the difficulties that the original tribunal had and which have caused me to have to set aside their decision.

3. In connection with the claim for the higher rate heating addition, the local office of of the Department wrote to the claimant's then general practitioner by a letter dated 19 March 1985 as follows,

"I have recently visited [the claimant] concerning his continuous claim for supplementary benefit due to his ill-health. [The claimant] has written to this Department stating he now suffers from Myasthenia Gravis, which I understand is a muscular weakening disease particularly affecting the eyes. [The claimant] states this is a specified serious disease for which he requires extra heating. At present he qualifies for the lower rate of heating addition. I should be very grateful if you would inform me if Myasthenia Gravis is a specified serious disease for which a higher rate

of heating addition is necessary."

4. The claimant's then general practitioner replied on 21 March 1985,

"It is true that [the claimant] suffers from Myasthenia Gravis, but I do not consider that this requires him to have extra heating."

In due course this letter from the claimant's general practitioner came before the social security tribunal that heard this case. That tribunal also had before it a medical certificate from a Dr. M S dated 15 November 1985 but that certificate does not appear to be in the appeal papers before the Commissioner and the new tribunal should enquire for it. The tribunal chairman made a note that the claimant had been taken into a hospital as he was suffering from hypothermia and that Dr. M S had the benefit of reports from specialists in that hospital, whereas the claimant's general practitioner's report was made after the first examination.

5. In confirming the decision of the local adjudication officer the original tribunal gave as their reasons for decision,

"The tribunal considered the evidence of the claimant that his current doctor, Dr. M S was now in possession of evidence from ... hospital which pointed to the fact that he needed additional heating. The certificate provided by Dr. S simply stated that he required additional heating. Since the claimant was in receipt of an additional heating allowance of £2.10 the onus was on him to show that he qualified for the extra amount of £5.20 a week on the basis that he was suffering from a serious physical illness. Whilst the tribunal considered that he might well have qualified under this heading the categorical statement by [the claimant's general practitioner in a letter dated 21 March 1985 set out in paragraph 4 above] that the condition did not require the claimant having additional heating precluded them from making a grant in retrospect under this particular heading."

6. In relation to the last sentence of those reasons the claimant's representative, in written submissions dated 11 March 1986, submits as follows (paragraph 4),

"The reasons of the tribunal are inadequate and indicate an error of law in so far as in the last paragraph of their reasons the tribunal indicate that the question of the claimant's qualification for a heating addition was not a matter that they regarded as one for them to decide. The last sentence indicates that they felt bound by the decision of the medical practitioner even though it appeared that they disagreed with it. It is submitted that this is effectively the same error of law which was identified in the case of R. v. Greater Birmingham Supplementary Benefit Appeal Tribunal, Ex parte Zamanchan (Decisions of the Courts relating to Supplementary Benefits and Family Income Supplement Legislation (HMSO) SB 22 at page 169) [there then follows an extract from the judgment of Mr Justice Lloyd in that case]."

7. The adjudication officer now concerned, in a written submission dated 12 January 1987 at paragraph 10, supports this submission by the claimant's representative as follows,

"However, I submit that the tribunal did err in law, for the reason put forward by the claimant's ... representative ..., that is, that the tribunal appear to have made their decision under the impression that the evidence of [Dr. T - the claimant's former general practitioner] was so strong as to oblige them to accept it, to the exclusion of other evidence. It may be that the tribunal properly considered the evidence, and considered that the strength of [Dr. T's] evidence was sufficient to outweigh evidence to the contrary, but if that is the case, I submit they have not been sufficiently clear."

8. I accept those submissions as undoubtedly being correct and as the tribunal prefixed its

last sentence by the words "whilst the tribunal considered that [the claimant] might well have qualified under this heading ..." there clearly has been an error of law in this case. The tribunal must give its own independent judgment as to whether or not it considers the claimant satisfies the requirements of paragraph 1(2)(b) of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983 providing for the higher rate heating allowance for a "person for whom extra warmth needs to be provided because he suffers from ... a serious physical illness". It is not of course enough that Myasthenia Gravis is "a serious physical illness" if that is so. It must also be of course that the extra warmth needs to be provided because the claimant suffers from that illness ie. that the illness necessitates the extra warmth being provided over and above the extent to which the claimant already had an extra warmth allowance under paragraph 1(1)(a) of Schedule 4 "because he suffers from chronic ill-health ...". The tribunal must make its own mind up about this. No letter from a medically qualified person is of itself conclusive but must be weighed by the tribunal along with all the other evidence. The original tribunal's doubts in this case, together with the fact that apparently there was other medical evidence, clearly necessitates an objective weighing up of all the evidence and an independent decision being given by the new tribunal.

(Signed) M.J. Goodman
Commissioner

Date: 28th July 1987