

VGHH/RFMH/RAS/MB

Commissioner's File: CSB/1171/1986

C A O File: AO 2832/86

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

Name: James Ernest Nash appointee Ruby Nash (Mrs)

Social Security Appeal Tribunal: Hertford

Case No: 007/14

[ORAL HEARING]

1. This adjudication officer's appeal succeeds. Our decision is that the decision of the social security appeal tribunal dated 28 May 1986 is erroneous in law and we set it aside. Our decision is that the decision of the adjudication officer dated 6 January 1986 was correct and we affirm his decision.

Representation

2. The adjudication officer was represented in this appeal by Mr. E.O.F. Stocker. The claimant was represented by Mr. R. Drabble of Counsel instructed by the Child Poverty Action Group.

Nature of the appeal

3. This is the sixth of the group of appeals referred to in Tyler (CSB/842/85) and the third appeal relating to a residential care home. As with the other appeals this appeal is concerned with the extent to which the board and lodging charges made for the claimant in the home in question (Dale Villa) are allowable in calculating the claimant's supplementary benefit and are to be met out of her supplementary benefit entitlement: Copies of the decisions in all the above appeals accompanies this decision. The definitions in Tyler are adopted.

The period in issue

4. The period in issue in this appeal is 25 November 1985 (the commencement date of the adjudication officer's award in his

decision of 6 January 1986) to 6 October 1986 (the day before that award fell to be re-calculated). See paragraph 3 of the written submission dated 14 October 1987 - page 76 of the case papers.

5. The pre-Cotton and Camden Regulations and the 1986 amendments are in point and the relevant provisions are set out in Tyler. The relevant provisions of the Registered Homes Act 1984 and of the Residential Care Homes Regulations are set out in Nicholas.

The adjudication officer's decision

6. By a decision issued on 6 January 1986 an adjudication officer decided, according to form AT2:

"The Appellant is entitled to a supplementary pension of £131.24 a week from 25.11.85"

7. On 4 March 1986 the claimant, through her representative and appointee, appealed against this decision "not to increase mothers allowance for Dale Villa ... My mother is senile and incontinent and requires nursing full-time, therefore Social Services cannot accept her in one of their homes for the elderly".

8. In his written submission on the appeal the adjudication officer stated that the facts before him were that the claimant was a widow who moved to her present address on 7 April 1984. She was required to pay fees of £130 per week from 1 January 1985 to the residential home. This charge was increased to £140 per week from 1 January 1986. The home was registered as a residential care home providing accommodation for persons in need of personal care by virtue of old age.

9. The adjudication officer's reasons for his decision were that he had considered Schedule 1A to the Requirements Regulations and determined that the accommodation provided for the claimant was a residential care home for persons in need of personal care by virtue of old age. The maximum amount for this was £120 per week. Regulations 9(17)(b) provided that the appropriate amount for the purposes of regulation 9(6) of the Requirements Regulations where the claimant was in receipt of a supplementary allowance immediately before 29 April 1985 should be the amount which was in payment for lodging prior to 29 April, 1985 if this exceeded the appropriate amount applicable under 9(6). As the claimant was receiving £130 for lodgings prior to 29 April 1985 the adjudication officer determined that this amount should continue to be allowed.

10. The rest of the adjudication officer's calculation of the claimant's supplementary benefit entitlement is not in dispute. It is set out on form AT2(A).

The social security appeal tribunal's decision

11. The tribunal heard the appeal on 28 May 1986. According to the chairman's note, the presenting officer outlined form AT2 and form AT2(A) and the appellant was represented by her son who said that if his mother went to another home it would cost more. She was put in the home by a doctor, a social worker and a psychiatrist. She was getting attention and was incontinent. She had to pay £2 per week for hairdressing and chiropody.

12. The tribunal's unanimous decision was:

"To allow the appeal;

13. Their recorded findings of fact were:

"The Tribunal accept the facts as stated on form AT2"

Their recorded reasons for this decision were:

"The Tribunal held that Schedule 1A (Requirements) Regulations lays down the maximum for boarders in residential care homes. The appellant is in need of personal care by virtue of mental handicap since she is senile and paragraph 1(1)(d) of Schedule 1A states that the appropriate amount shall be £150 weekly".

Was the tribunal's decision erroneous in law?

14. Yes. It clearly was. "Mental handicap" has the same meaning in paragraph 1 of Schedule 1A of the Requirements Regulations (the Camden Regulations in the present case) as that expression has for the purposes of the Registered Homes Act 1984 and regulations made thereunder: see paragraph 6(2) of Schedule 1A which is set out in the Third Appendix to Tyler. It is defined in regulation 1(2) of the Residential Care Homes Regulations 1984 as "a state of arrested or incomplete development of mind which includes impairment of intelligence and social functioning". Contrast "mental disorder" which is defined in section 55 of the Registered Homes Act 1984 as "mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind". Senility is not a state of arrested or incomplete development of mind. It is a characteristic or infirmity of old age. It is not a mental handicap, in terms of the definition quoted, at all; though it may perhaps, if the infirmities are sufficiently advanced, amount to "mental disorder" in terms of the definition of that expression. The tribunal were in error as to the law in deciding that senility was a mental handicap and we set their decision aside on this ground.

15. A copy of the register of the proprietor of Dale Villa residential care home is in evidence. The proprietors were registered on 1 January 1985 in respect of Dale Villa for 24

residents under category I, namely old age. The appropriate amount for old age under paragraph 1(a) of the Camden Regulations was £120 a week from 25 September 1985 to 27 July 1986 and by virtue of SI 1986 No. 1252 £125 a week from 28 July 1986 to 5 April 1987. The protected amount was, (see paragraph 8) above) £130 a week. This is not in dispute. The register is conclusive as to the category of care when only one category of care, as is the case here, is shown; see paragraph 31(5) of Nicholas and the reasons given in that decision. Thus the adjudication officer was correct in calculating supplementary benefit on the basis that the protected amount of £130 applied, since this was higher than the limit specified for old age. (For an explanation of the protected amount, see our decision in Tyler).

(2) If the register were not, contrary to our view, conclusive as to the relevant category this would not, in the present case, assist the claimant. For the only categories that exceed £130 in amount during the period in issue are mental handicap, (which for the reasons set out in paragraph 10 above cannot apply) and physical disablement which arose before attaining pensionable age. Disablement is defined in section 29 of the Registered Homes Act as meaning that the person concerned is "blind, deaf or dumb or substantially and permanently handicapped by illness, injury or congenital deformity or any other disability prescribed by the Secretary of State". It was held in decision CSB 70/1986 (with which in this respect we express our agreement) that physical disablement should be construed in conformity with this definition. There is no suggestion, anywhere in the case papers, nor was it suggested by Mr. Drabble, that the claimant could fall within this category.

12. Our decision is set out in paragraph 1.

(Signed) VGH Hallett
Commissioner

(Signed) RFM Heggs
Commissioner

(Signed) RA Sanders
Commissioner

Date: 11 February, 1988

THE SOCIAL SECURITY COMMISSIONERS PROCEDURE REGULATIONS 1987
REGULATION 24(1).

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER - CORRECTION

Name: James Ernest Nash appointee for Ruby Nash (Mrs)

Social Security Appeal Tribunal: Hertford

Case No: 007/14

Page 3 Paragraph 15 should read 15(1)

Page 4 penultimate line of paragraph 15(1)
to read 'old age'

(Signed) V.G.H. Hallett
Commissioner

(Signed) R.F.M. Heggs
Commissioner

(Signed) R.A. Sanders
Commissioner

Date: 19 February 1988

Commissioner's File: CSB/1171/1986
CSBO File: 2832/86