

Dietary addition - meaning of "special diet"

DGR/SH/5/MD

Commissioner's File: CSB/1205/1985

C A O File: AO 3137/85

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

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 15 August 1985 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.
2. This is an appeal by the adjudication officer, brought with my leave, against the majority decision of the social security appeal tribunal of 15 August 1985.
3. On 9 April 1985 the claimant, who was in receipt of supplementary benefit, claimed an additional requirement for a special diet on the basis that he had to follow a diet that cost substantially in excess of £3.60 per week. The claimant was suffering from Hodgkins disease and because of the drugs he was taking by way of treatment for his condition his appetite so increased that he consumed a greater quantity of food than would a normal person. The additional requirement sought was to defray that cost.
4. On 26 April 1985 the adjudication officer disallowed the claim, but on 15 August 1985 a majority of the tribunal, to whom the claimant had appealed, decided that the claimant was entitled to a dietary addition of £5 per week.
5. The claimant, who did not attend the hearing before the tribunal, was represented by Miss Williams of the Merseyside Welfare Rights Advice Centre. She argued that the claimant satisfied paragraph 14 of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983 [SI 1983 No.1399] because he had a very large appetite attributable to the drugs he was taking. In her submission the claimant had to follow a special diet within the meaning of paragraph 14.
6. The tribunal made the following findings of fact:-

"The tribunal were satisfied that [the claimant] did not need a special diet as medically recommended, but that he did need, as a result of his treatment,

considerably more food than a normal person, and that this consequently resulted in extra expenditure.

The majority of the tribunal gave as the reasons for their decision the following:-

"The tribunal held that [the claimant] should be entitled to an extra allowance for food under paragraph 14(e) of Schedule 4 of the Requirements Regulations. In reaching this decision the tribunal noted the unreported decision CSB/517/1982, which was submitted to them by Miss Williams."

7. Paragraph 14(e) of Schedule 4 provides as follows:-

"Person who needs a special diet because he -

(a)-(d)

(e) suffers from a condition, other than one specified in sub-paragraph (a), for which he has to follow a diet which involves extra cost, substantially in excess of the amount specified in sub-paragraph (a) in column 2 [ie. £3.60 per week at the relevant time]."

8. Now, it is clear from the finding of the tribunal, based on the evidence before them, that if the additional food consumed by the claimant constituted a special diet within the above paragraph, the need therefor did not directly arise from the claimant's condition, but from the treatment he received for that condition. Accordingly, on any footing, I do not see how he can get within paragraph 14(e).

9. But, quite apart from the above consideration, I do not consider that an abnormal quantity of food can as such constitute a "special diet". The word "special" qualifies the nature of the food comprised in the diet. It indicates, where the diet does not simply operate to exclude items (as to which see below), that certain specific foods or classes of foods must be added to a normal person's intake, or alternatively if they are already included therein, it indicates that a greater quantity of such specific foods or classes of food is called for. In other words, a special diet will arise where certain foods or types of food are added to the normal run of items consumed or where the proportions are changed so that specific foods or classes of food are consumed disproportionately. I do not consider as being a special diet a mere increase across the board of all the various foodstuffs consumed by the ordinary person who is not on a diet. This approach is implicit in the observation in paragraph 19 of decision R(SB)16/83:-

"There was not before the appeal tribunal any evidence of there being any item in the claimant's diet which would not have been there had she been in perfect health."

10. I am aware, of course, that some special diets, so far from requiring some specific foods or classes of food to be added to the relevant person's usual intake, actually call for an exclusion of such items. For example, someone may be put on "a no fat diet", in which event there will be certain items which he will no longer consume. However, a diet of this sort would by definition not involve any extra expense unless, by way of compensation for the items to be abstained from, it called for the consumption of some new specific foods or classes of foods or, if the same were already included in the person's current intake, a greater quantity thereof. But in this event the special diet would in effect be of the type described in paragraph 9 above.

11. The tribunal appear to have relied on the unreported decision CSB/517/1982, an authority brought to their attention by Miss Williams. The relevant paragraph would appear to be paragraph 12(1) which reads as follows:

"Little difficulty appears to me to arise upon the text in column (1) of paragraph [14]. It is apparent from the introductory wording of paragraph [14] that the reference in sub-paragraph (e) to "a diet which involves extra cost" contemplates the excess of cost of a "special" diet over that of a "normal" diet; and I would add in that context only that whilst in many usages the basic concept of "diet" is an intake of food and or drink which is restricted (in character and/or quantity) by reference to the norm, the term "diet" is in my view in context as well applicable where the difference consists in some addition to such intake in excess of what is the normal (as eg. in "a high protein diet")."

Manifestly, that comment cannot be construed as establishing that a mere increase in the volume of the general food items consumed by an ordinary person constitutes a special diet. All that the learned Commissioner was there indicating was that in the context of paragraph 14 the adjudicating authorities are only concerned with the case where there is an addition to the normal range of foodstuffs. I agree with this. As I have already explained, there would only be an increase in cost where there is an addition to, not where there is an exclusion from, a normal diet, unless, of course, such an exclusion led to a compensating addition. Accordingly, the unreported decision CSB/517/1982 has no bearing on the present case.

12. Clearly, then, the tribunal erred in point of law in deciding that the claimant was entitled to an additional requirement for a special diet, and accordingly I must set aside their decision. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned above.

13. I allow this appeal.

(Signed) D.G.Rice
Commissioner

Date: 22nd May 1986