AR for hearing. "Serious physical illness" in Sch 4 para 1(2)(b) to be judged by reference to claimant's condition & in no way has to be identified with, or comparable to, the conditions set out in para 1(2)(a) or para 1(3)(a) or (b)

DGR/SH/29

Commissioner's File: CSB/35/1988

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

Name: E Q

Social Security Appeal Tribunal: Manchester

Case No: 6/14/03973

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 12 October 1987 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be re-heard by a differently constituted tribunal who will have regard to the matters mentioned below.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 12 October 1987.

3. The question for determination by the tribunal was whether the claimant, who was already in receipt of an additional requirement pursuant to paragraph 1(1)(a) of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983, could bring himself within paragraph 1(2)(b). Sub-paragraphs (1),(2) and (3) read as follows:-

"1. - (1) Person for whom extra warmth needs to be provided -

(a) because he suffers from chronic ill-health, due for example to bronchitis, rheumatism, arthritis or anaemia; or

(b) because of restricted mobility due to some physical reason, for example, general frailty.

(2) Person for whom extra warmth needs to be provided because he suffers from -

(a) physical illness or physical disability to the extent that he is confined to the home or unable to leave it alone; or

(b) a serious physical illness.

(3) Person who suffers from -

(a) a serious physical illness such that a constant temperature

must be maintained; or

(b) a physical illness or physical disability to the extent that he is confined to bed or cannot walk unaided within the home, and needs extra heating day and night."

If the claimant can bring himself within paragraph 1(2)(b), then he will be entitled to an additional requirement at the higher rate, namely £5.45. It is interesting to note that a person who can satisfy the provisions of paragraph 1(3) receives no more by way of an addition than someone falling within paragraph 1(2).

4. In the event, the tribunal decided that the claimant was not entitled to a heating addition at the higher rate. They made the following findings of fact:-

"1. [The claimant] was in receipt of an additional requirement (in respect of heating) of £2.20 when he claimed the higher rate heating allowance of £5.45 on 11.12.85.

2. [The claimant] suffers from arthritis which restricts his mobility. He is ab to go out unaided and is also willing to undertake light work.

3. He does not suffer from a serious illness."

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

"Paragraph 1(2)(a) and 1(3)(b) by consent do not apply to [the claimant]. A previous Tribunal of 8 May 1986 found that paragraph 1(3)(a) did not apply to the Appellant. That decision and the reasoning which led to it was not erroneous in law. Where that Tribunal had erred in law was in not making a finding of fact and decision in respect of paragraph 1(2)(b) which is the sole area with which this Tribunal is concerned.

The question is essentially: Is [the claimant's] illness a serious one?

There is no doubt that arthritis may develop to a point where it will be correct to describe it as serious but the evidence before us led us to conclude that this was not the case with [the claimant]. We had the opportunity of observing [the claimant] and we noted that he is willing and able to take light work if this became available. The Doctor's note is a matter of medical opinion not a statement of fact and it must weighed and evaluated in the context of the law applicable to this appeal. In our vie the word 'serious' as used in paragraph 1(2)(b) must connote some significant disability comparable with the conditions noted in paragraph 1(2)(a) and 1(3)(a) and (b). [The claimant] does not show such a significant disability and has not therefore moved, in a benefits context, from paragraph 1(1)(a) to paragraph 1(2)(b)."

5. The claimant first contends that the tribunal erred in point of law in defining "serious" as connoting some significant disability "comparable with the conditions noted in paragraphs 1(2)(a) and 1(3)(a) and (b). Secondly, he argues that the only evidence upon which the seriousness of the illness could be adjudged was that of the medical practitioner. There is nothing in the second point. Whether or not a condition is a serious one depends upon a value judgment by the tribunal. They must consider all the evidence including, of course the opinion of the claimant's general practitioner. However, in no sense are they bound by that opinion. Such evidence must be weighed by the tribunal along with all other evidence. In the present instance, the tribunal had the opportunity of observing the claimant and noted that he was willing and able to take on light work if this were available. In that context, they were entitled to reach the conclusion that, whatever the doctor might say in his letter, the claimant's condition was not serious.

6. However, the first point put forward by the claimant is more substantial. The tribunal asked the correct question, namely "Is [the claimant's] illness a serious one?". Moreover, in answering that question, exception cannot be taken to their first observation, namely:-

> "There is no doubt that arthritis may develop to a point where it would correct to describe it as serious but the evidence before us led us to conclude that this was not the case with [the claimant]. We had the opportunity of observing [the claimant] and we noted that he is willing and able to take light work if this became available. The doctor's note is a matter of medical opinion not a statement of fact and it must be weighed and evaluated in the context of the law applicable to this appeal."

However, unfortunately the tribunal imprudently took it upon themselves to define what was meant by "serious", and they did this by reference to comparability with "the conditions noted in paragraphs 1(2)(a) and 1(3)(a) and (b)". I consider that the term "serious physical illness" should be judged by reference to the claimant's condition in the light of the tribunal's experience of the world, together with any medical or other evidence, and it should in no way have to be identified with the specific conditions set out in the paragraphs referred to by the tribunal. In other words, I cannot be confident that the tribunal have fully appreciated what might constitute a serious physical illness. They have applied an unjustified restriction, and it is not clear that the claimant has not satisfied the requirements of paragraph 1(2)(b).

7. It follows that I must set aside the tribunal's decision and direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned above.

8. I allow this appeal.

(Signed) D.G. Rice

Commissioner

Date: 1 August 1988