

DGR/SH/14

Commissioner's File: CSB/035/1990

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the social security appeal tribunal given on 25 May 1989 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 claimant, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 25 May 1989.

3. On 9 March 1989 the adjudication officer refused to review an additional requirement for a special diet of £1.65 per week. The claimant thereupon appealed to the tribunal who, whilst accepting that the claimant was entitled to a special diet at the higher rate of £3.80 per week, were not prepared to extend it further nor were they prepared to backdate it beyond the date of her request for review dated 3 March 1988.

4. Unfortunately, the tribunal have erred in law on various grounds. First, in deciding that the claimant was entitled to a dietary addition at the higher rate of £3.80 per week within paragraphs 14(a) of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983, the tribunal proceeded on the basis that the claimant's condition, which was multiple sclerosis, was analogous to the conditions set out in that paragraph. However, this constitutes a misconstruction of the terms of that provision. To fall within it, a claimant had to show that he or she suffered from some illness for which he or she "requires a diet analogous to that required for the other illnesses specified in this sub-paragraph". In other words, the analogy had to be, not as between the claimant's condition and the various conditions set out in the paragraph, but between the diet the claimant required and the diet called for by the other illnesses. In misconstruing the paragraph, the tribunal erred in point of law, and accordingly on that ground alone I must set

aside their decision.

5. However, the claimant was clearly seeking not a dietary addition at the rate set out in paragraph 14(a), but a dietary addition at the far higher rate catered for in paragraph 14(e). She provided evidence that the food she really required cost £19.66 per week. The tribunal clearly rejected the computation. They said:-

"It was not accepted that she should be entitled to the whole cost of the specimen diet which she submitted at the hearing, since this contained unreasonably expensive items for which cheaper substitutes could be found."

Unfortunately, the tribunal failed to explain exactly how they calculated her dietary requirement. In other words the claimant has been left in the dark as to why her computation was not accepted.

6. Thirdly, the claimant sought a backdating of the award. She gave evidence that she had been advised to follow the diet in January 1987, whereas her request for review was only made on 3 March 1988. It could be argued that, if the tribunal were satisfied that grounds for review existed for an award at least from 3 March 1988, it was incumbent upon them to consider how far back such an award should be made, and in so far as the claimant made out her need for the relevant dietary addition as from a date more than 12 months prior to the date of the application for review, it was incumbent on the tribunal to consider the effect of regulation 69 of the Social Security (Adjudication) Regulations 1986 and the possible application of regulation 72(1). I consider that the failure on the part of the tribunal to consider a possible backdating is a further error of law.

7. It follows from the foregoing 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 criticisms set out above.

8. I allow this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 3 March 1992