

DGR/SH/14/MD

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Region: North Eastern

**SUPPLEMENTARY BENEFITS ACT 1976**

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

Name: Peter Kynaston

Social Security Appeal Tribunal: Bradford

Case No: 044/12

**[ORAL HEARING]**

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 5 August 1985 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant, brought with my leave, against the decision of the social security appeal tribunal of 5 August 1985. The claimant asked for an oral hearing, a request to which I acceded. At that hearing the claimant, who was not present, was represented by Mr D R Watkinson of Counsel, instructed by the Bradford Law Centre, whilst the adjudication officer appeared by Mr C Gratwicke of Counsel, instructed by the Solicitor's Office of the Department of Health and Social Security. I am indebted to both of them for their submissions.

3. On 3 July 1984 the claimant, who was in receipt of supplementary benefit, claimed an additional requirement to meet "the actual cost of attendance" consequent on the need of the claimant's wife to look after their daughter, who had undergone an operation and required attention throughout the period from 15 June 1984 to 8 October 1984. In order to furnish this attention the claimant's wife had given up her employment. The claimant appears to have complained to the adjudication officer and to the tribunal that his benefit suffered a loss of the £4 disregard.

4. The adjudication officer disallowed the claim for an additional requirement, and his decision was upheld by the tribunal. They made the following findings of fact:-

"1. The claimant has a daughter who underwent an operation and, in consequence, needed constant attendance.

2. The DHSS accepts that the provisions of paragraph 10, Schedule 4, of the Requirements Regulations are met but disputes that any actual cost is involved by way of payments outside the family.

3. The claimant's wife gave up her employment in order to look after daughter. She

therefore lost £4 per week wages normally disregarded for purposes of Supplementary Benefit.

4. The period in question is June 15 to October 8 1984, during which time the father was in receipt of supplementary benefit."

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

"The critical consideration is the term 'actual cost'. The tribunal, with regret, considered that this involved actual payments and could not involve a loss caused by cessation of work, even though this had resulted from the mother's need to look after her daughter."

5. Regulation 11 of the Supplementary Benefit (Requirements) Regulations 1983 [SI/No 1399] provides:-

"11. - (1) The items to which the category of additional requirements relates are those for which provision is made in Schedule 4."

Regulation 13 of those Regulations provides, so far as is relevant, as follows:-

"13. - (1) Subject to regulation 11 and paragraphs (2) to (7), the weekly amount specified in column (2) of any paragraph in Part II of Schedule 4 shall be applicable to the claimant -

(a) in relation to any of those paragraphs, other than paragraphs 15, 17 and 18, in respect of a member of the assessment unit to whom column (1) of the corresponding paragraph applies;"

Paragraph 10 of Part II of Schedule 4 to those Regulations reads as follows:-

"10. Where -

(a) in the opinion of the adjudication officer a member of the assessment unit who is aged not less of than two weeks -

(i) frequent attention in connection with his bodily functions; or

(ii) continual supervision in order to avoid substantial danger to himself or others; and

(b) either -

(i) a claim by or in respect of him has not been made for attendance allowance under section 35 of the Social Security Act because he has not satisfied the condition in

10. The actual cost of attendance calculated on a weekly basis, up to the amount of the lower of attendance allowance specified in the second column of paragraph 1 of Part III of Schedule 4 to the Social Security Act."

sub-section 2(b) of that section (six months qualifying period), but the adjudication officer is satisfied that he will make such a claim within six months of any amount being allowed under this paragraph; or

- (ii) such a claim has been made but it has not yet been determined by an insurance officer appointed under section 97(1) of that Act;

but this paragraph shall cease to apply to that member if no claim is made within that six months or, as the case may be, when the claim is so determined, unless it is disallowed on the grounds only that conditions as to residence and presence prescribed under section 35(1) of that Act are not met."

6. It is not in dispute in this case that the claimant qualifies for an award of an additional requirement for the actual cost of attendance within paragraph 10 of Part II of Schedule 4. The sole question at issue is what constitutes "actual cost". The tribunal took the view that the term denoted expenditure ie. a positive disbursement; it did not encompass a loss of a resource caused by the cessation of work.

7. Mr Watkinson contended that this was too narrow an interpretation. The word "actual" took the matter no further. The crucial word was "cost". His submission was that the word "cost", should be given its ordinary everyday meaning, and as such it implied not merely disbursements but losses of all kinds. He drew my attention to the definition of "cost" in Chambers 20th Century Dictionary and in the Shorter Oxford English Dictionary. In the former the word is defined as meaning:-

"What is or would have to be laid out or suffered or lost to obtain anything."

Manifestly, this is a wide definition and supports Mr Watkinson's contention. However, the definition in the Shorter Oxford English Dictionary is somewhat less favourable to Mr Watkinson. There the word "cost" is defined as:-

"That which must be given in order to acquire, produce or effect something; the price paid for a thing."

Nevertheless, Mr Watkinson drew my attention to a phrase occurring in that dictionary under the word "cost":-

"To any one's cost" which is interpreted there is meaning "To his loss or detriment."

In Mr Watkinson's submission this interpretation clearly enlarged the basic definition. I

accept Mr Watkinson's approach. I consider that the ordinary everyday meaning of "cost" embraces not merely positive expenditure, but a negative consequence, i.e., a loss of some advantage. Thus, we speak of an incident having cost a man his job, or a General might refer to his of having achieved a victory "at a great cost", meaning "as a result of a great loss of life".

8. However, although it is proper to commence the consideration of the meaning of a word by reference to its everyday ordinary meaning, it then becomes necessary to consider whether that meaning should be modified, having regard to the context in which the word appears. Mr Gratwicke argued that the context in the present case did influence the construction to be applied. The ultimate issue was whether or not the claimant was entitled to an additional requirement. In the context of the supplementary benefit legislation "requirements" indicated expenditure and the word "cost" should be so restricted. I agree with that approach. Supplementary benefit is arrived at by considering the extent to which a claimant's requirements exceed his resources. A balance sheet is, as it were, drawn up, with a claimant's needs set out on the one side and his resources, i.e. his income on the other. Subject to the detailed working of the regulations, the claimant receives by way of benefit the difference between the two figures. Requirements postulate the need for expenditure, resources constitute the means of meeting that expenditure. The loss of a job, and the earnings which go with it, represent a loss of resources. In other words, the loss of employment is concerned with resources, and not with requirements. But paragraph 10 of Part II of Schedule 4 relates to requirements. Therefore, in my judgment, cost used in this context refers to expenditure, and it is accepted in this case that the assessment unit did not incur any expenditure at all. All that it suffered was a loss of resources which, for the reasons given above, I consider irrelevant.

9. Accordingly, the tribunal were right in their construction of the term "actual cost". They did not err in law in reaching the conclusion they did, and it follows from this that this appeal fails.

(Signed) D.G. Rice  
Commissioner

Date: 27th February 1987