

Commissioner's File: CSB/075/1991

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 6 November 1989 is erroneous in point of law and accordingly I set it aside. I direct that the matter be reheard by a differently constituted tribunal, who will have regard to the matters referred to below.

2. This is the claimant's appeal on a point of law against the decision of the social security appeal tribunal of 6 November 1989, leave having been granted by the tribunal chairman.

3. The claimant, a widow aged 72, was in receipt of supplementary benefit. On 1 March 1988 she claimed an additional requirement for diet because her medical condition required her to follow a gluten free diet. She enclosed a diet sheet showing the weekly cost of the diet as £27.58. In reply to enquiries the claimant's doctor supplied particulars of the claimant's medical condition and stated that she needed to follow a gluten free low animal fat diet and that all the gluten free products were prescribable.

4. The adjudication officer sought the advice of the Department's senior medical officer who in turn sought the advice of the Chief Dietitian at St Batholemew's Hospital on the diet and an estimate of its weekly cost as compared with a normal diet. On receipt of this information the senior medical officer advised the adjudication officer that the cost of gluten free items should be deducted from the total cost of the claimant's diet since she could obtain them on prescription free of charge.

5. In the light of the evidence the adjudication officer calculated that the total cost of the claimant's diet would be

£17.50 per week. He accepted that some extra cost was likely to be involved with a low fat/gluten free diet since it involved a different pattern of food from normal. However the claimant was not satisfied with the amount awarded and she appealed to the tribunal.

6. The claimant and her representative attended the hearing of the appeal before the tribunal on 6 November 1989. Three further comparable lists of diets were submitted in support of the claimant's claim. In the event the tribunal awarded "£18.10 per week from 1 March 1988" basing their calculation "by taking note of those prescribed foods and the normal quantities required by a person of the appellant's age."

7. It is not in dispute that the calculation of the claimant's supplementary benefit should include an additional requirement for diet under paragraph 14(e) of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983. The claimant's evidence was to the effect that her diet cost £27.58 weekly whereas, in the opinion of the Department's senior medical officer, the cost of the diet was £17.50 weekly. The adjudication officer now concerned submits that the decision was erroneous in law because it failed to comply with the requirements of regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 in that the figure of £18.10 weekly had not been canvassed before the tribunal and the tribunal failed to state with sufficient detail the basis on which the amount was calculated. Further the decision did not explain to the claimant why the tribunal rejected her evidence. I agree with that submission.

8. In his written submission dated 15 May 1991 the adjudication officer now concerned also supports the appeal for the following reasons:-

"... it will be incumbent upon the new tribunal to decide the date from which any award under paragraph 14(e) of Schedule 4 is payable since the original request for review made on 1.3.88 included a request that any award be backdated 52 weeks. The tribunal however failed to address this point and made the award from the date of request for review. In my submission, should it be determined that the circumstances giving rise to the award of the additional requirement had been in existence as at 1.3.87, the award may be backdated to this date as provided for by regulation 69 of the Adjudication Regulations."

I accept that submission.

9. For the reasons set out above the tribunal's decision was erroneous in point of law. The claimant's appeal is allowed and I give the decision set out in paragraph 1.

(Signed) R.F.M. Heggs
Commissioner

(Date) 20 March 1992