

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 dated 18 July 1989 is erroneous in law. I set it aside and direct that the case be reheard by a differently constituted tribunal.

2. The question for the tribunal was whether the adjudication officer had been right to allow the claimant £138.00 in respect of his claim for a payment for bedclothes under regulation 12 of the Supplementary Benefit (Single Payments) Regulations 1981.

3. The current adjudication officer supports this appeal he says -

"5. It is not in dispute that the claimant satisfies the conditions of regulations 12(1) and (2) of the Single Payments Regulations and that the award of £138.00 was to bring his stock of bedding up to those set out in regulation 12(3). However, it is my submission that it was the claimant's evidence that the bedding he already possessed needed replacing due partly to frequent washing caused by his incontinence and kidney disease and also because there was no heating in his children's bedrooms. I submit that the tribunal have failed to show that they have considered this evidence.

6. In Commissioner's decision R(SB) 11/82 (paragraph 14) it was confirmed that a failure to set out adequately the reasons for a decision was itself an error of law. It was also held that the claimant, looking at the decision, should at least be able to discern on the face of it, the reasons why the evidence submitted had failed to satisfy the authority. It is my submission that the instant decision leaves the claimant in the dark as to why his evidence was not accepted. In so doing, I submit, the tribunal has failed to comply with regulation 25(2)(b) of the Adjudication Regulations and thus erred in point of law.

7. I respectfully submit that in view of the need for further investigation and findings of fact the appeal should be remitted to a differently constituted tribunal to be heard afresh. For completeness, I submit that the department's letter of 15 3 89 and the second doctor's letter which was enclosed with the claimant's letter of 25 7 88 (referred to in the claimant's grounds of appeal to the Commissioner at pages 45 and 46 respectively) should be before the new tribunal."

I agree with those submissions. The tribunal's decision is erroneous in law in the respects referred to and I accordingly allow this appeal. I also agree that the missing documents referred to in the last paragraph of the adjudication officer's submissions should be before the new tribunal.

(Signed) R A Sanders
Commissioner

Date: 3 February 1992